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ABSTRACT

This report examines the extent of policy bargaining, as well as factors that might explain variation in its extent. Results of interviews in 6 districts with over 15,000 enrollment indicate that bargaining is more extensive than predicted in the curriculum, student placement, and teacher selection areas. States without the teacher strike option also have more bargaining, but no relationship was found between policy bargaining and union affiliation. Status quo provisions that freeze working conditions for a contract's life are also extensively bargained. Additionally, most sample contracts contain grievance procedures that affect policy by mandating how provisions will be enforced. Bargaining agreements reflect a sensitivity to the emerging policy issue of education of the handicapped, which means that special education teachers' interests influence bargaining agendas. Between 1975 and 1981, significant increases in bargaining over noncompensation provisions occurred, indicating that such bargaining had not peaked by 1975. Educational policy bargaining may reduce school district adaptability because of the fixed nature of the contract. Bargaining may also be related to student achievement because it regulates key variables related to school effectiveness. (Author/KS)

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THE EXTENT AND NATURE OF EDUCATIONAL POLICY BARGAINING

By

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ABSTRACT

Defining educational policy provisions as those that direct the development and implementation of educational programs, we investigated the extent of educational policy bargaining and examined some factors that might explain variation in extent of policy bargaining. To determine whether bargaining agreements reflect responses to emerging national policy issues, we gave special attention to one such issue, education of the handicapped. We also examined the extent to which policy provisions are implemented, the extent of bargaining over certain nonpolicy provisions that have strong interactive effects with policy provisions, and trends in educational policy bargaining.

Using a Contract Provision Analysis Form developed for this study, we analyzed 80 contracts from districts with over 15,000 enrollment. Interviews with school personnel were conducted in six of these districts. Findings indicate that educational policy bargaining is extensive, to a degree not previously recognized or predicted, in the areas of curriculum, student placement, and teacher selection and assignment. There was more educational policy bargaining in states where teacher strikes were illegal and the private sector was highly unionized. No consistent relationship was found between policy bargaining and particular national teacher union affiliation or district enrollment. Interview results suggest that bargained policies are implemented.

It was found that "status quo" provisions, which maintain current practices and procedures, were also extensively bargained. Because these provisions freeze working conditions during the life of the contract, they strongly influence educational policy. Nearly all the sample contracts contain grievance procedures, which affect policy by mandating how policy provisions will be enforced.

We also found that bargaining agreements reflect a sensitivity to the emerging policy issue of education of the handicapped, with a substantial number of the contracts including policy provisions related to this area. This finding indicates that, contrary to previous assertions, the interests of special education teachers exert more than minimal influence on bargaining agendas.

Finally, we found that between 1975 and 1981 there were significant increases in bargaining over a number of noncompensation provisions, such as grievance procedures and pupil exclusion provisions, which indicates that bargaining over noncompensation provisions, contrary to some researchers' predictions, had not peaked by 1975.

Because the contract fixes what things must be done, how, when, and by whom, we speculate that educational policy bargaining may reduce school district adaptability. Policies and decisions once left to the discretion of building administrators are now established by contracts. It is possible that educational policy bargaining may be related to student achievement because it limits or regulates several key variables related to school effectiveness.

CHAPTER I. INTRODUCTION

Literature Review

In preparation for this study we undertook a review of the literature concerning collective bargaining in education. This literature documents the impact of collective bargaining on the salaries and working conditions of teachers, suggests an impact on school governance, indicates an increase in bargaining over matters of educational policy, and offers several interpretations of the effects of policy bargaining on the administration of schools.

Bargaining for Salaries and Working Conditions

As the subtitle of one recent research study indicates, "Unionism Now Pays." In 1977 teachers represented by labor organizations increased their salaries between 12 and 21 percent more than teachers who did not bargain collectively (Baugh and Stone 1982). Through collective bargaining, teachers also have remedied some of the concerns about working conditions that initially spurred them to organize. Between 1970 and 1975 teacher organizations and school boards substantially increased bargaining over working conditions, such as length of school day, instructional committees, and grievance procedures (McDonnell and Pascal 1979). Employees represented by teacher unions, when compared with unrepresented teachers, negotiated slight decreases in the pupil-teacher ratio, the length of the working day, and the number of after-school obligations. They also bargained slightly increased time for class preparation and meetings with parents (Eberts and Pierce 1982).

Effects on School Governance

Scholars not only have assessed the impact of collective bargaining on teacher salaries and working conditions but also have speculated about its effect on school governance. Some legal-political theorists have argued that any form of collective bargaining between government and its employees threatens the tenets of representative democracy (R. Summers 1976). From their perspective, exclusion of citizens from governmental decision making, as when school boards and teacher organizations bargain behind closed doors, is inconsistent with the democratic governance of schools. However, other legal-political theorists, more moderate in their approach, ask: Of the spectrum of school district governance decisions, which may be decided through the collective bargaining process without jeopardizing our democratic form of government (C. Summers 1974; Wellington and Winter 1971)? These scholars conclude that teachers should be permitted to bargain over decisions central to their welfare such as salaries, benefits, and other conditions of work. In support of these conclusions, scholars cite the difficulty teachers without bargaining rights have had convincing school boards to levy taxes sufficient to provide salaries and benefits commensurate with teachers' level of education. On the other hand, they argue that matters of policy should be reserved for determination in open meetings according to the tradition of representative democracy. They take this position because neither teachers nor citizens agree about what constitutes the most effective educational policies. Therefore, though educational policy decisions are inherently enmeshed with concerns about employee welfare, these policy decisions should be informed by the wide variety of perspectives represented in the community (C. Summers 1974).

These early criticisms of legal-political theorists anticipated more recent observations of collective bargaining researchers. McDonnell (1981) agrees that the very nature of collective bargaining makes it resistant to citizen access and influence; she argues that, in order to maintain participatory opportunities for citizens, decisions about school policy may have to be moved to the state legislature, even though such action would result in a loss of local control. Kerchner and colleagues (1981) acknowledge, likewise, that collective bargaining over policy restricts broad participation in local school governance. However, they suggest that community members, even if unable to influence the school's administrative bureaucracy, may still affect local policy decisions through the election or recall of school board members, or threats of such actions.

Bargaining Concerning Educational Policy

If alterations in the traditional process of local school governance resulted only in better working conditions and fair treatment for teachers, communities might not be concerned. However, there is increasing evidence that school boards and teacher unions also bargain concerning educational policies, and the consequences of such bargaining are not well understood. For example, Perry and Wildman (1970) studied 24 large school districts and concluded that teachers were interested in bargaining over policies and probably would attempt to do so in the future. A decade later Perry returned to nine of those districts, examined their most recently negotiated collective bargaining agreements, and found "a substantial expansion in the contractual job rights of teachers in terms of both protection against arbitrary treatment and participation in decisionmaking" (1979, p. 17). He concluded that such bargaining "...had posed a serious, if not insurmountable

barrier for management in implementing some policy decisions and administrative actions" (1979, p. 16).

Likewise, Bickel and Bickel (1979) conducted a longitudinal study of bargaining in Pittsburgh schools and discovered that over a ten-year period the Pittsburgh Federation of Teachers had succeeded in bargaining 218 nonmonetary provisions and that the union was increasingly effective in its efforts to obtain nonmonetary concessions from the school board. In a national survey, McDonnell and Pascal (1979) compared contracts from 1970 and 1975 and found a substantial increase in the percentage of districts bargaining over such nonsalary items as class size, promotion rules, teacher evaluations, reduction-in-force procedures, the use of teacher aides, and instructional committees. They predicted that the real gains of teachers had leveled off by 1975 and that "...students probably experience the effects of bargaining indirectly and occasionally" (1979, p. 83).

One difficulty found consistently across these studies is the failure to define policy adequately. For example, Bickel and Bickel (1979) defined policy provisions as those not exclusively monetary. McDonnell and Pascal (1979) identified trends in teacher collective bargaining on "noncompensation" items. The provisions selected for analysis in their study had to meet the following criteria: (1) show linkage to working conditions, job security, and professional autonomy; and (2) influence the ways in which educational services are delivered and schools are governed. Perry (1979) identified three categories of provisions: "wage bargaining" (compensation), "effort bargaining" (work load), and "rights bargaining" (participation in policy decisions). Although "policy" is not defined, Perry mentions such policy issues as class size, teacher transfer, school integration, pupil grading, student discipline, and student promotion. Eberts and Pierce

(1980), who studied the effects of collective bargaining on resource allocation, suggested some links between bargaining and the educational attainment of students. However, they did not draw a distinction between policy and nonpolicy contract provisions.

The lack of distinction between policy outcomes and other bargaining outcomes creates serious problems for researchers investigating three types of problems. First, it makes it impossible to assess whether the concerns of the legal-political theorists were justified. Only reports of the extent of policy decisions (rather than working conditions) will allow conclusions about whether the substitution of a bilateral decision-making process for a multilateral one has seriously effected public educational policy. Second, for those who seek to build on previous assessments of the content of collective bargaining agreements, the failure to provide a definition of policy precludes comparison of results. Third, and most significant, the absence of a distinction between policy and non-policy makes it very difficult to look at the possible educational impact of collective bargaining. In fact, reports of the extent of bargaining over the issues most likely to effect the educational process are nearly nonexistent, and we know of no report that both focuses on educational issues and maintains a separation between educational policy and teacher wages, hours, and conditions of employment.[1]

---

[1]The National School Boards Association Research Report, Impact of Collective Bargaining on Curriculum-Instruction, by A. Gray Thompson and Russell H. Ziemer (1975) addresses the central educational policy issue suggested by its title. However, both decisions about working conditions and decisions about educational programs are included among the 18 curriculum-instruction categories (groups of 96 components). Further, there is no indication of relative strength of contract provisions. Thus, a contract might establish a joint curriculum committee, but whether that committee is empowered only to make recommendations or actually to make binding decisions cannot be known.

Scope and Rationale of the Study

Our evaluation of the methodological strengths and weaknesses of previous work led us to conclude that our own research must be guided by three considerations. First, the sample should be national in scope because data derived from only a few states cannot represent accurately a population influenced by broad variability in state collective bargaining statutes.[2] Second, entire contracts, not excerpts or summaries, should be examined since collective bargaining agreements are not properly understood as loose aggregates of isolated provisions. Rather, contracts tend to be highly integrated documents that reflect a history of complex negotiation strategies.[3] Thus, provisions negotiated at one time and placed in one section of an agreement are often linked to provisions negotiated later and placed in a different section of the contract. The relationships among provisions in a contract are often synergic, and the effects of provisions-in-combination cannot be assessed unless agreements are analyzed

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[2] Since the United States Supreme Court's decision in National League of Cities v. Usery 426 U.S. 833, 96 S. Ct. 2465 (1976) appears to preclude a federal bargaining law for state and local government employees, the various state statutes will continue to define the legal framework for public employee bargaining. Researchers interested in the study of nationwide bargaining trends will have to draw from a broad sample in order to account for the variability in state laws.

[3] For example, see discussion of the rule of contract interpretation, adhered to by arbitrators, that the meaning of particular words or provisions in a contract can only be understood by construing the agreement as a whole (Elkouri and Elkouri 1973, pp. 307-8).

in their entirety (Goldschmidt 1983). Finally, the analysis of the content of collective bargaining agreements had to be guided by an explicit and appropriate definition of educational policy, one that could be applied consistently, and one that allowed for the distinction between provisions that established educational policy and those that set working conditions for teachers.

We defined "educational policies" as directives that determine the development and implementation of educational programs, developed a Contract Provision Analysis form, identified contract provisions that established policy, and described the extent such provisions appear in the sample of contracts. We then analyzed the relationship between the frequency of policy provisions and national teacher union affiliation, state laws regarding the legality of teacher strikes, size of student enrollment, and percentage of unionized, nonagricultural private sector work force in the state. We also wanted to know how sensitive collective bargaining is to emerging policy issues and to investiate this question, we paid particular attention to a single policy issue, the education of handicapped students. Therefore, we separated policies that affected the education of all students from those that explicitly addressed the education of handicapped youngsters.[4]

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[4]In the past decade courts, state legislatures, and the Federal government have directed public policy so as to provide a free public education to all handicapped students. In some instances, this impetus has created controversy at the local-district level where advocates for the handicapped have come into conflict with school authorities over the amount of district resources to be made available to the handicapped. For a recent summary of the resulting litigation see Citron (1982).

In addition to our analysis of collective bargaining agreements for their educational policy provisions, we examined four categories of nonpolicy contract clauses: (1) status quo provisions (those provisions that maintain current practices), (2) grievance procedures, (3) special education working condition provisions, (4) and noncompensation provisions comparable to those identified by McDonnell and Pascal (1979). Status quo provisions and grievance procedures were examined because of their impact on school district decision-making processes and their interactive effects with policy provisions. Four types of status quo provisions were considered: maintenance of standards, agreement has precedence, duty to bargain, and subcontracting. Maintenance of standards provisions may extend the influence of a contract by fixing written policies not specified in the contract as well as by freezing existing school district practice for the term of the contract. Agreement has precedence clauses extend the influence of a contract by superseding and incorporating school district educational policies or rules and by subjecting these to the contract grievance procedure. Such provisions, along with contract language that establishes a duty to bargain over changes in working conditions or prohibits a school district from subcontracting work currently performed by teachers, solidify the status quo. Grievance procedures were examined because they provide the primary, and ordinarily the exclusive, basis for enforcing rights specified in the contract.

Contracts were analyzed to determine whether they included arbitration provisions, binding or advisory. Further, if they included binding arbitration, they were analyzed to determine whether arbitration was available solely for alleged violations of the contract or whether alleged violations of policies, rules, and practices external to the contract also

could be arbitrated.

Provisions establishing working conditions in school district special education programs were identified and reported along with special education policy provisions in order to provide complete baseline data for school personnel and public policymakers interested in the influence of collective bargaining on efforts to implement judicial and legislative mandates regarding the education of handicapped students. In addition, such an analysis might provide a basis from which to assess the contention by Mitchell and colleagues that special education teachers exercise only minimal influence on the local union's bargaining agenda (1981, p. 157).

Interest in following up the trends reported by McDonnell and Pascal stemmed from two questions about their work: Had "the real gains of teachers" leveled off by 1975 as they expected (1979, p. 83)? Does collective bargaining have little effect on the educational program of students (1979, p. 88)?

Limits of the Study

The most important limitation of the study inheres to the focus of the research. Not all educational policies appear in contracts. Thus, a statement about the extent of collectively bargained educational policy is not a statement about all educational policy, even in the 37 states that require or permit bargaining. Furthermore, since we examined agreements in districts with student enrollments over 15,000, the findings reflect urban rather than rural or small town experiences. Finally, project resources required that some choices be made. For instance, we do not report on the extent of bargaining over the important topic of teacher evaluation. Since evaluation criteria and procedures are often specified in state statute and

administrative rules, any report of teacher evaluation policies derived solely from collective bargaining agreements--without comparing them to the controlling or complementary state policies--would be misleading rather than helpful.

CHAPTER II. DESCRIPTION OF THE STUDY

Sample

The study population consisted of contracts from school districts with a minimum pupil enrollment of 15,000[5] in states where: (1) teacher collective bargaining was required by statute; (2) teacher collective bargaining was permitted either (but not required) by statute or judicial decision; or (3) teachers and school boards were required by statute to "meet and confer" over terms and conditions of employment.

To insure inclusion of districts characterized by independent variables that might influence bargaining outcomes, this population was stratified according to affiliation of the local teachers' union and existence of state impasse resolution laws. The affiliation stratum was composed of National Education Association (NEA), American Federation of Teachers (AFT), and Independent (nonaffiliated). The impasse resolution stratum was composed of states where teacher strikes are permitted by law and states where teacher strikes are not authorized. Figure 1 shows the stratification cells created by these dimensions.

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[5]Data obtained from Curriculum Information Center's School Directories (1981).

		AFFILIATION		
		NEA	AFT	Independent
IMPASSE RESOLUTION	Strike	(a) 8	(b) 8	(c) 0
	No Strike	(d) 165	(e) 42	(f) 6

Fig. 1. Stratification Cells of Contract Population

Because of the small number of districts in cells (a), (b), and (f), all were retained for the sample. From both cells (d) and (e), 30 districts were selected at random for inclusion in the study. This brought a total of 82 districts into the sample. However, two districts selected from cell (d) had no collective bargaining agreements and therefore, the total sample size was reduced to 80 contracts.[6]

Affiliation of local teacher unions was determined by telephone calls to state officers of the American Federation of Teachers and to individual school districts. A legal reporting service summarizing current state laws was consulted to determine the states that have legalized teacher strikes (Kheel 1981).

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[6] Both of the districts are located in states without a teacher collective bargaining law. Bargaining in both states therefore occurs only at the discretion of local school boards. In one of the two districts the school board withdrew recognition of the union and refused to bargain further after a teacher strike. In the other district, teachers had not been successful in convincing the local board to enter into a collective bargaining agreement.

Definition of Educational Policy

We defined educational policy as directives that determine the development and implementation of educational programs. To determine whether contract provisions fell within our definition of educational policy, we turned to the decisions of state courts and labor relations agencies. Charged with settling scope of bargaining disputes, these adjudicating bodies have developed three standards for distinguishing between policy and nonpolicy provisions (Clark 1977). One of these standards, "the balancing test," guided this research in an effort to achieve consistency in the analysis of contracts for policy provisions.[7]

The balancing test recognizes that virtually every decision about schools--from budgets and hours of work to curriculum and personnel assignment--affects both the working conditions of teachers and the educational program of students. Under the balancing test, only provisions that weigh more heavily toward the development and implementation of educational programs than toward the working conditions of teachers are considered policy provisions. Examples of policy provisions include those that establish programs, restrict the assignment of students, and direct the selection, assignment, and retention of personnel. Provisions setting salaries, benefits, leaves, hours of employment, and the like, are examples

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[7] Specifically, see Sutherlin Education Association v. Sutherlin School District. 25 Or. App. 85, 548 P.2d 204 (1976). In addition to the "balancing test," courts and state labor relations agencies use the "management rights" and "significant relations" standards. Under the management rights standard a state may enumerate either subjects considered to be working conditions and therefore mandatory subjects of bargaining or items considered policy and thus only permissive subjects of bargaining. Under the significant relation standard, a contract provision is considered a matter of policy if it does not have a significant effect upon working conditions (Clark 1977).

of nonpolicy provisions. Similarly, provisions establishing minimum fairness rights--requirements of notice and guarantees of opportunity to respond to or participate in decisions that affect working conditions--are not considered matters of educational policy.

The following discussion of class size provisions demonstrates how the balancing test was used to identify policy provisions in the 80 sample contracts. Since class size affects the number of pupils to be supervised, quantity of papers to be graded, class size influences the working conditions of instructional staff. At the same time, however, a class-size limit may set policy when it determines staffing levels or the transfer and assignment of both teachers and students. The sample contracts contain three distinct categories of class-size provisions: those setting absolute limits on numbers of students, those setting guidelines for the numbers of students, and those limiting the number of students per class before teachers must be given additional compensation.

We decided that only provisions setting unalterable class size limits establish policy by directing the development and implementation of school district educational programs. Provisions merely establishing class-size guidelines indicate a goal that the district and teacher organization desire, but do not mandate. Since these do not fix a specific decision, they were also classified as nonpolicy provisions. Finally, provisions that set class-size limits but allowed the maximums to be exceeded if teachers are compensated were classified as nonpolicy provisions. Although implementation of these latter provisions may require trade-offs, the provisions do not fix any element of the educational program or dictate the assignment or utilization of personnel. Since options are available, such provisions were classified as nonpolicy provisions.

Content Analysis of Contracts

Content analysis was employed in the study of contracts and required the development of a classification system that defines the variables to be studied. Therefore, we developed a Contract Provision Analysis Form (see Appendix A). The initial version of the form was developed in a pilot study of the ten school districts with the largest enrollments in the state of Washington. Training of researchers proceeded simultaneously with the construction of the form. The principal investigator and two researchers independently read pilot study contracts and identified (1) provisions establishing educational policy, (2) status quo provisions (maintenance of standards, agreement has precedence, duty to bargain, subcontracting) and grievance procedures, (3) nonpolicy provisions affecting special education teachers, and (4) certain noncompensation provisions comparable to those identified by McDonnell and Pascal. Continuing staff seminars improved the researchers' ability to read and interpret contract language, identify policy provisions, and define the parameters of the categories. As agreement was reached on the types of provisions to be included in each category, they were added to the Contract Provision Analysis Form and definitions were refined to guide future sample contract analysis and to enable other researchers to replicate or expand upon our study.

After the development of the Contract Provision Analysis Form, each of the 80 sample contracts was analyzed. Provisions falling into one of the four categories identified above were extracted. Contracts were read independently by each researcher and a single analysis form for each contract was then completed by consensus. As analysis of the 80 sample contracts proceeded, it became clear on two occasions that the Contract Provision Analysis Form needed to be revised. In both instances the revisions were

prompted by the need to describe more accurately the variety of provisions found in the sample bargaining agreements.[8]

After the relevant provisions in contracts were identified, the frequency distributions for categories of provisions were tallied. In addition, the association between independent variables and the inclusion of policy provisions in contracts was calculated by chi-square. The independent variables examined were: (1) local teacher union affiliation--American Federation of Teachers (AFT), National Education Association (NEA), or Independent, (2) state laws regarding the legality of teacher strikes (strikes legal versus strikes expressly illegal or not addressed in the statute), (3) number of pupils enrolled in the district (15,000-25,000; 25,000-50,000; more than 50,000), and (4) percentage of the nonagricultural, private-sector work force in the state that was unionized (more than 27 percent, less than 27 percent). (See Appendix B for the distribution of sample districts in these categories.) The justification for selecting these variables follows.

Other researchers have questioned whether the union affiliation variable accounts for variation in local bargaining relationships (McDonnell and Pascal 1979; Yates 1978). The histories of the two national teacher unions (NEA and AFT) suggest to some that their bargaining priorities would be different. Union affiliation was identified in the sample to ascertain if a relationship between affiliation and policy bargaining exists.

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[8]Form changes occurred after analysis of 12 and 32 sample contracts. After each revision all sample contracts that had been previously analyzed were reanalyzed using the revised form. As a result, each researcher examined 12 contracts three times, 24 twice, and the balance of the sample contracts were read once.

Interest in the impasse resolution variable was stimulated by McDonnell and Pascal's finding that state laws are significant predictors of contract outcomes (1979, pp. 28, 57). Since only a handful of states have adopted laws permitting teachers to strike, we questioned whether any relationship existed between a legal right to strike and the negotiation of educational policy.

The selection of the student enrollment variable stems from McDonnell and Pascal's notion of "flagships"; that is, larger districts with mature bargaining relationships are the first to negotiate issues of concern to teachers (McDonnell and Pascal 1979, pp. xii, 31). The categories for this variable were selected to isolate a small group of large districts (50,000 students or more). In addition, we checked for differences in the bargaining outcomes between districts with 15,000 to 25,000 students and those with 25,000 to 50,000 students.

Finally, although McDonnell and Pascal found inconsistent results when they correlated demographic variables with contract outcomes, they concluded, nevertheless, that local factors exerted the most significant influences on contract outcomes (1979, p. viii). While resources did not permit extensive investigation of local factors, the negotiation of educational policy was correlated with the percentage of the nonagricultural work force in the state that belonged to an AFL-CIO affiliate. Inspection of summary tabulations of the percentage of 1978 organized work force suggested that states could be grouped into high and low unionized work force categories according to whether more or less than 27 percent of the nonagricultural work force of the state was unionized (U.S. Bureau of the Census, p. 414, 1981).

Interviews

Analysis of collective bargaining contract language was supplemented with interviews of school district and teacher union personnel. Interview data were gathered in two stages. In March 1981, after 32 contracts were analyzed, onsite interviews with both school district and teacher union personnel were conducted in two school districts.[9] These interviews were conducted in two metropolitan school districts whose contracts contained a number of educational policy provisions, particularly in the area of education for handicapped children. The interviewers gathered information on three questions:

1. How many of the provisions identified as regulating the education of handicapped children were negotiated in response to court orders or legislation?

2. Were actual school district practices consistent with the negotiated educational policy provisions?

3. Was the contract analysis form complete, or did it require further revision? Would conversations with practitioners force recognition that something had been overlooked?

In October 1982, following analysis of the entire sample of contracts, additional onsite interviews were conducted. Ten districts were identified with contract provisions concerning at least six of our educational policy categories. (See Table 5 for policy categories). From these ten districts, four were targeted: two districts with numerous regular education policy provisions and two districts with contracts containing both regular and special education policy provisions. Interviewers gained access to the four districts and gathered information on the first two questions.

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[9] Informants for the interviews included school district and teacher union negotiators, special education administrators and teachers, principals, and regular education teachers.

Two reseachers participated in the second set of interviews. One took primary responsibility for inquiry about specific contract provisions, such as date of negotiation, circumstances prompting negotiation, and issues accompanying implementation. The other asked more general questions related to such matters as the history of teacher organization/school district relationships and speculation about the course of future negotiations. Interviews were audio tape recorded with the permission of the informants who were assured anonymity. Each subject was asked to be available for later questions, and in several instances follow-up phone interviews were conducted.

CHAPTER III. REPORT OF THE FINDINGS

We investigated the extent of educational policy bargaining and examined some factors that might explain variation among contracts. Special attention was focused on a single policy issue, the education of handicapped students.

Our findings indicate that school boards and teacher organizations bargain numerous educational policies. They bargain provisions that set the curriculum, determine the assignment of students, and structure school personnel relationships. Our findings pertaining to policy bargaining are reported as follows:

> Extent of Policy Bargaining presents the frequency of policy provisions in the area of curriculum, student placement, and teacher selection and assignment. Examples of such provisions are presented and discussed.
>
> Independent Variables provides an analysis of the association between contract-established policies and affiliation of the local teacher union, size of district, presence of state laws permitting teacher strikes, and percentage of the unionized nonagricultural private-sector, state work force.
>
> Interviews reports the results of onsite interviews in six districts. These were conducted to determine the efficacy of the Contract Provision Analysis Form, to identify the reasons for negotiating provisions related to handicapped students, and to establish the degree to which negotiated policies are implemented.

Following these sections, we report the extent of bargaining over nonpolicy provisions as follows:

> Status Quo and Grievance Procedure Provisions reports the frequency of nonpolicy provisions that have unusually strong interactive effects with policy provisions. These provisions include: maintenance of standards, agreement has precedence, duty to bargain, subcontracting, and grievance procedures.

Special Education Working Conditions reports the frequency of provisions that affect the working conditions of teachers of handicapped students. These were collected and reported with special education policy provisions in order to provide complete baseline data for school personnel and public policy makers interested in the effect of collective bargaining on efforts to implement judicial and legislative mandates regarding the education of handicapped students.

Noncompensation Provisions reports our effort to determine if the bargaining of noncompensation items of the type reported by McDonnell and Pascal has leveled off since 1975 as they predicted.

Extent of Policy Bargaining

Policy provisions identified in the sample of collective bargaining agreements govern the educational program in three major areas: (1) curriculum, (2) student placement, and (3) teacher selection and assignment. These findings are summarized in Table 1. We found that 46 percent of the contracts include policy provisions governing curriculum, 64 percent of the contracts include policy provisions governing student placement, and 96 percent of the contracts included policy provisions governing teacher selection and assignment. Each of these areas will be discussed in detail. Examples of provisions are included when an illustration contributes to the understanding of the designation of a particular type of provision as policy.

TABLE 1
POLICY PROVISIONS IN TEACHER COLLECTIVE BARGAINING AGREEMENTS

Policy Category	Percent of Contracts with Provision Present
Policies Governing Curriculum	46
Policies Governing Student Placement	64
Policies Governing Teacher Selection and Assignment	96

Curriculum

The sample of contracts contains large numbers of both policy and nonpolicy provisions in the area of curriculum. Contract provisions guaranteeing teachers an opportunity to participate in, advise on, or appeal curriculum decisions do not rise to the level of educational policy because they do not determine the curriculum. Rather, such provisions guarantee teachers the opportunity to participate in educational policy decisions, and therefore weigh more heavily toward conditions of employment. For example, nearly 40 percent of the contracts establish at least one joint advisory committee on curriculum, while half that number establish two or more such committees. Over one-half the sample contracts provide for some other form of teacher involvement in curricular decisions, usually by creating ad hoc faculty advisory committees. None of these provisions is included in our identified set of policy provisions governing curriculum. On the other hand, provisions that prescribe educational program, personnel, materials or teaching methods are more heavily weighted toward educational policy than teachers' working conditions. Since such provisions determine elements of the educational program a community provides for its children, they are policy decisions and are included in the set of policy provisions governing curriculum. Forty-six percent of our sample contracts contain provisions that go beyond minimum fairness to regulate curriculum. These provisions can be separated into those dealing with the regular curriculum and those regulating the special education curriculum as is shown in Table 2.

TABLE 2
POLICY PROVISIONS GOVERNING CURRICULUM

Policy Category	Percent of Contracts with Provision Present *
Regular Curriculum	**45**
Programs Offered	26
Teaching Methods/Materials	23
Mandated Personnel	18
Special Education Curriculum	**15**
Total Policies Governing Curriculum	**46**

*The sum of subcategories exceeds the total because some contracts contain provisions from more than one subcategory.

Regular Curriculum. Forty-five percent of the sample contracts contain provisions that establish policies governing the regular curriculum. These policies either (1) regulate the educational programs offered, (2) prescribe teaching methods and materials, or (3) mandate personnel. Twenty-six percent of the sample contracts contain policy provisions that regulate the educational programs offered. For example, one contract includes the following provision on innovative programs:

> Nothing in this provision shall prohibit the Board from developing innovative programs and schedules in certain schools so long as the staff in such a school by secret ballot, votes approval of such innovation, provided no teacher is required to work in excess of the provisions of Section 204.04 above and provided no teacher is required to work in excess of the teacher's regular contract year.[10] Prior to any such secret ballot vote the Principal's Advisory Council shall study the proposed innovative programs and schedules and shall make recommendations to the staff.

[10]Section 204.04 establishes the hours of the regular workday, and sets a maximum number of hours that teachers are required to work. Additional hours are by individual contract or teacher consent.

Under this provision, while the board may propose an innovative program and the principal may make recommendations on the program, the contract grants teachers the authority to decide whether the program will be established.

Twenty-three percent of the sample contracts contain policy provisions prescribing teaching methods and/or materials. These range from a relatively straightforward requirement of compliance with state law on testing students' knowledge of the U.S. Constitution to more complex provisions such as the following:

> All members of the team teaching unit, including the team leader, shall work daily directly teaching students in amounts of time and ways determined by all teacher certificated members of the team.

This provision has unusually strong policy implications because it gives teachers full authority to determine who will teach particular students and the methods by which the students will be taught. Several contracts contain provisions that set conditions on the acquisition of textbooks and instructional supplies. An example follows:

> Teachers shall participate in the selection of books. No new textbook will be adopted if it is opposed by a majority of the committee of teachers involved in the potential use of that textbook.

Finally, 18 percent of the sample contracts contain policy provisions that require employment of specific personnel to perform certain duties. The following provisions from a single contract are representative of this category:

> The Board shall maintain reading specialist teaching positions which were filled in the 1977-78 school year, except that maintenance of those reading specialist positions which are federally funded shall be subject to the continued availability of federal funds for that purpose.
>
> The Board shall provide one (1) reading teacher for each academic interdisciplinary teaching team in each of the middle schools.

Such provisions affect curriculum because they ensure that the subject matter of the required specialists will be taught. Under such a provision, even if a district finds it necessary to conduct a reduction-in-force (RIF), the RIF of the mandatory personnel may be precluded. Thus, whether the mandated positions are more or less critical to the district's educational program, reductions will be spread among other areas.

Special Education Curriculum. In addition to policy provisions governing the regular curriculum, other provisions relating specifically to the curriculum for handicapped students were identified. Table 2 shows that 15 percent of the contracts in the sample contain provisions that regulate programs or teaching methods for the handicapped. Some of these provisions regulate the special education curriculum by specifying classes to be provided for particular categories of handicapped students:

> Classes will be provided for students who qualify as slow learner, behavioral disordered, hearing and visually impaired, language/speech deficient, orthopedically handicapped, and mildly and moderately learning disabled.

Others require the assignment of specific personnel to special education classes:

> The Board will continue to provide one (1) special education certified spare teacher to work primarily with PMR and TMR classes at [the] Education Center.

And still others stipulate the materials and/or types of personnel to be used in special education programs:

> The District shall supply the necessary resources [to meet the requirements of 94-142]...Such resources shall include but not be limited to:
>
> (a) testing and evaluation instruments purchased by the District to insure uniform, non-discriminatory testing;
> (b) district forms shall be in the individual buildings prior to the opening of school each year;
> (c) audio-visual hardware and software;
> (d) educational materials, e.g., books, workbooks, etc.

> Regular classroom and special education employees shall be provided with resource and support personnel required to meet the legal requirements of P.L. 94-142. This shall include, where legally required: psychologists, speech and hearing clinicians, therapists, counselors, adaptive physical education teachers, visiting teachers/social workers, interpreters, clerical aides and any other legally required personnel.

Student Placement

Provisions identified in the sample that affect student placement decisions fall into two categories: (1) those limiting class size for all students or only for handicapped students, and (2) those regulating placement of handicapped students or of students who are suspended from a class.

TABLE 3
PROVISIONS GOVERNING STUDENT PLACEMENT

Policy Variable	Percent of Contracts with Variable Present*
Class Size Limits	43
All Students	34
Handicapped Students	31
Placement Constraints	51
Suspended Students	44
Handicapped Students	19
Total Policies Governing Student Placement	64

*The sum of subcategories exceeds the total because some contracts contain provisions from more than one subcategory.

Class Size Limits. Sample contracts contain three distinct categories of class size provisions, only one of which was considered a matter of policy (See discussion above in Chapter II). As Table 3 indicates, 43 percent of the sample contracts contain class size provisions that establish policy by setting absolute limits on class size. An example of

such a class size policy provision is provided below.

Section 1 - Elementary	Maximum/Classroom
Kindergarten.	33
Grades 1 -3	33
Grades 4 -6	34

Within thirty (30) school days after the beginning of the school year, if the above maximum class sizes for kindergarten through grade 6 are exceeded, the District will make adjustments, either by reorganizing classes or providing additional teaching staff to meet these maximums. Maximum class sizes as stated in this Article shall not apply during the last three school months if there is an increased enrollment in the school.

Under such a provision, decisions about the educational program begin with the assumption that the contract-mandated, class size limit will be maintained. The effect of such a provision is to prohibit the weighing of other factors against class size in reaching decisions about the structure of the educational program. Competing interests that might affect program decisions, such as parent desires, student needs, or abilities of particular teachers, cannot be addressed--regardless of how pressing they may be--if the result is a class size in excess of contractually specified maximums.

Other types of absolute class size provisions are those that:

(1) establish a formula for computing class size that assigns "weights" to different types of students. Handicapped students, for example, could be equivalent to 1.5, 2.0, or 2.5 students, depending on the handicapping condition.

(2) set absolute limits on class size but also establish guidelines for lower numbers of pupils, described as "optimum" class sizes.

(3) establish absolute limits on class size but include "escape clauses" that allow exception to class size limits if mutually agreed to by individual teachers (and/or the union) and the building or program administrator.

(4) add force to a contract-imposed limit on class sizes by also limiting the size of enrollment differences that can exist among classes with fewer pupils than the class size limit.

Examples of these are found in Appendix C.

In addition to the 43 percent of the sample contracts that contain absolute class size limits, 44 percent contain class size provisions that do not rise to the level of policy. Consider first an example of a contract provision that merely establishes class size guidelines. Twenty-nine percent of the sample contracts include this type of provision.

> The District shall make reasonable efforts to meet the following pupil/classroom teacher averages per school site:
>
> K-5/6— 29 (exclusive of special education)
> 6/7-8— 31
> 9-12— 33
>
> The District shall make reasonable efforts to meet the following pupil/classroom teacher average per 9-12 school site:
>
> English Department--28
>
> The District shall make reasonable efforts to limit K-3 combination classes to a maximum of 27 students.

Although numbers of students to be enrolled in classes at various grade levels are incorporated into the contract by this provision, no aspect of the district's educational program is fixed, since the district is only required to make reasonable efforts to meet the limits listed. The listed class sizes, therefore, provide guidelines but not absolute limits.

A second type of nonpolicy provision, in addition to imposing guidelines, establishes some form of compensation for teachers when guidelines are exceeded. Fifteen percent of the sample contracts include this type of provision. An example of a class size provision with guidelines and compensation is provided below.

Class Size Limitations: The Board of Education agrees to set class size limitations of 30 in grades kindergarten and first grade, 31 in grades 2 through 6, and 33 in grades 7 through 12. Because of numerous scheduling problems, the Board of Education will agree that a one student per teacher session variable may exist. A review board consisting of a senior high, a junior high, and an elementary teacher will meet daily for the initial weeks of opening the schools to assist the Superintendent in equalizing the class loads throughout the school district.

When a class size, after the tenth student day, exceeds the limit, the teacher shall be paid $5.00 per additional student per day in the elementary school and $1.00 per additional student per hour in the secondary schools.

This type of class size provision imposes significant restrictions on the educational program since it requires that the district expend funds, which might be applied to some other part of the program, to pay teachers if class size guidelines are exceeded. Nonetheless, an absolute restriction on the educational program does not result from such a provision.

Table 3 shows that 31 percent of the sample contracts set class size limits for self-contained classes of handicapped students.[11] These fall into one of the four following categories: provisions that set absolute limits on class size without reference to state regulations (5 percent); provisions that list state established guidelines (whether or not they are absolute under state law) as the absolute limits for the district (3 percent); provisions that do not list, but merely incorporate, by reference, the state established limits (19 percent); or some combination of the aforementioned categories (4 percent).

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[11] In addition to limiting the size of special education self-contained classes, 10 percent of the sample contracts impose limits on the caseload carried by special education support personnel. Thereby, the number of students that, for example, an audiologist or psychologist might be assigned to work with on a regular basis is limited.

It is not surprising to find so many special education class size provisions tied to state laws or regulations. Since the landmark court decisions of the early 19 Os, the education of handicapped children has become the target of extensive federal and state regulations.[12] Limitations on class size are a central feature of those regulations. The fact that states establish class size limits and the parties incorporate them into local collective bargaining agreements does not diminish the policy status of these provisions for several reasons. First, state established limits are often guidelines, not mandates. However, when these limits are written into a contract they are subject to the contract grievance procedure, and in all but one of the contracts containing special education class size limits, grievances culminate in third-party binding arbitration. Thus, whereas state regulations may permit local deviations, an arbitrator might rule such deviations to be a violation of the contract.[13] Second, even

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[12] See, for example, the precedent-setting decisions Pennsylvania Association for Retarded Citizens v. Pennsylvania, 343 F. Supp.279 (1972); Mills v. Board of Education of D.C. 348 F. Supp. 866 1972).

[13] In one of the interview districts a grievance over an alleged violation of the class size provision had reached the arbitration stage, even though the class size in question was not a violation of the state regulations.

if state regulations mandate class size limits, a teacher's recourse when those limits are violated may be procedures that are quite cumbersome or the regulations may permit exceptions.[14] Binding arbitration of grievances provides teachers with access to a rapid and effective remedy for alleged contract violations.[15] Finally, since arbitrators interpret the intent of contract language, when special education class sizes described in state law are incorporated into the contract, either specifically or by reference, an arbitrator may enforce these limits even if legislatures subsequently change them. The arbitrator's interpretation of the bargaining history may be determinative.[16]

In sum, the majority of the provisions limiting the size of classes for handicapped students tie these limits to standards set by state law. Nevertheless, such provisions are policy because they convert guidelines into mandates.

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[14] New York state regulations on class size limits for handicapped students contain the following provision: "Upon application and justification to the commissioner, approval may be granted for variance from the special class sizes and chronological age ranges specified in paragraphs (4) and (5) respectively." [Regulations 1981, section 200.6 (f) (6)]

[15] A teacher union negotiator remarked during an interview that the district's contract grievance procedure was considerably more efficient than the procedure for appealing violations of state regulation. In fact, this particular contract contained an expedited appeals procedure dealing exclusively with the placement of handicapped students. It had been negotiated precisely because of the cumbersome nature of the appeals procedure under state regulations.

[16] Interviews with district and union personnel in one district indicated that on the basis of bargaining history they expected an arbitrator to enforce their contract's special education class size limits even after the state legislature increased the statutory class size limit.

Placement Constraints. Table 3 shows that 51 percent of the sample contracts contain policy provisions placing constraints on the placement of students. These constraints appear in two major areas: the placement of students who have been removed from class (44 percent) and the placement of handicapped students (19 percent).

A provision that delineates the treatment of students whose behavior causes them to be removed from class is not per se a policy provision. Educational policy interests must be balanced against effects on teacher working conditions in order to determine whether a contract clause rises to the level of policy. When students exhibit unruly or even violent behavior in a classroom, their continued presence in the classroom may pose a threat to the physical safety of the teacher and/or other students. Further, teachers are generally held responsible by school administrators for ensuring orderly conduct by pupils. The ability to maintain effective classroom discipline often figures prominently in administrator evaluations of teacher performance. Clearly, teachers have strong personal and professional interests in the discipline policies of the school. The board of education's interest in discipline policies also is strong. School discipline policies influence a school's learning environment and have been considered

> ...as much a part of the school's educational program and the student's educational experience as the subjects taught and the extra-curricular programs offered....Discipline policies, procedures, and the sanctions meted out according thereto establish student conduct norms, and introduce students at an early age to the concepts of citizenship, responsibility and the system of natural consequences which undergirds our informal and formal legal systems.... (Lincoln County Education Association v. Lincoln County School District, C-64-78, 4 PECBR 2519, 2527 OR Employment Relations Board, December 1979).

When the competing interests of teachers and the board of education are weighed, it is clear that some aspects of a district's discipline policies and procedures are more directly related to teachers' conditions of

employment than to the establishment of the educational program. Contract provisions requiring teachers to be notified of the school's standards of discipline, permitting teachers to comment on or suggest changes in those standards, or allowing teachers to appeal student discipline decisions do not fix the educational program. Further, a contract provision that permits teachers to exclude temporarily a student who poses a danger of physical harm to others is more heavily weighted toward conditions of employment. Such a provision does have an impact on the student's educational program and necessarily is subject to widely differing interpretations of the types of behavior that constitute "danger"; nevertheless, the impact on teachers outweighs the element of educational policy involved.

Twenty-six percent of the contracts contain provisions require consultation with a teacher before suspended students may be returned to class. These have been included as educational policy provisions, because such a prior consultation requirement may well go beyond "minimum fairness" to establish a criteria for placement. For example, if a teacher were ill or absent for other reasons, a student placement might not be possible and therefore a student might be temporarily "housed" in another class or the principal's office.[17]

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[17] If the provisions requiring prior consultation that appear in 26 percent of the sample contracts were not included as policy, as they might not be in some states, the changed totals in Table Two would be:

Placement Constraints	38
Suspended Students	24
Total Policies Governing Student Placement	59

The remaining two categories of provisions go even further toward regulating discipline decisions either by mandating that students must be suspended if they have assaulted teachers (16 percent) or by granting teachers authority to determine whether a suspended student may be returned to the classroom (9 percent). Provisions in the former category may subject to binding arbitration the decision of whether an assault, in fact, occurred. As a result, student placement decisions may be made by neutral third parties. Parents seeking an opportunity to influence such a decision, or students who desire a due process review would find the decision maker (the arbitrator) beyond their reach. Provisions in the second category, that require teacher permission before students can be readmitted to the classroom, ultimately permit teachers to establish the criteria for assigning students. The result may be periodic breaching of student assignment policies in favor of ad hoc decisions by each staff member.

Like policy provisions regulating student discipline, provisions governing the placement of handicapped students attain policy status when they establish the criteria to be used in making placement decisions. Table 3 reveals that 19 percent of the contracts constrain the placement of handicapped students. They do so by regulating the mainstreaming of handicapped students, the placement of handicapped into special classes, or both. Provisions regulating the mainstreaming of handicapped students either limit the number of special students who may be placed in any particular classroom or establish rules governing the mainstreaming process. For example, the following provision appears in one sample contract:

> Handicapped students (educable retarded, visually handicapped, speech/hearing handicapped, socially and emotionally disturbed, and learning disabled students) should be integrated with regular students in both academic and nonacademic classes. No more than five (5) students shall normally be assigned as part of any one of these classes and in no event shall more than six (6) such students be so assigned. . . .Integration into regular mainstream classes, particularly academic classes, shall be based on pupil readiness as indicated on the Individualized Education Program (IEP) developed by the special education teacher, building administrator or designee, and the student's parent.

Other contracts set implied limits on the number of students mainstreamed. For example, the following provision could place limitations on the mainstreaming of students with handicapping conditions into classes that are composed of students from different grade levels:

> When split classrooms are created, the teacher who will be assigned to such a classroom will be consulted with respect to the selection of students for that class. Such selection will be made with the goal of insuring as much homogeneity in terms of educational development as possible and only students within three reading levels will be included.

A final approach to regulating mainstreaming is seen in the following provision that gives teachers absolute control over the mainstreaming process under certain narrowly prescribed conditions.

> Students eligible for EMR classes and/or units may not be enrolled in vocational programs unless the teacher accepts the students as capable of satisfactory performance.

Provisions constraining the placement of handicapped students into self-contained special education classes either set criteria or give teachers the option to set criteria for such placements. Examples from two contracts follow:

Children with a single disability in Special Education classes shall be grouped according to their disability.

The Board further recognizes that the regular staff member, unless trained to do so, may not fairly be expected to assume ongoing responsibility for emotionally disturbed students, and further, may not be charged with the responsibility for psychotherapy.

Staff members have as their responsibility the identification of such students to the building principal, for referral to appropriate special services personnel serving that building in order to seek special help and more productive ways of dealing with such students.

Whenever a particular student requires the attention of special counselors, social workers, law enforcement personnel, physicians or other professional persons, the administration shall take prompt action to relieve the staff member of responsibilities in the areas concerned, as regards such students.

Teacher Selection and Assignment

Contract provisions regulating teacher placement may either establish educational policy or set the terms and conditions of teachers' employment. To determine whether a particular teacher assignment provision establishes policy, the teachers' interest in working conditions and the district's educational policy interests are balanced. Provisions establishing the rights of teachers to request a transfer, apply for particular vacancies, receive notice of vacancies or impending reassignments, or even to appeal a transfer decision all weigh more heavily toward teachers' employment conditions than toward fixing the educational program. Although these provisions impose procedural impediments and may slow the process of assigning teachers, they do not determine actual teacher placement. Therefore, on balance, their impact on teachers is greater than the impact on the educational program a school district offers.

However, in public education, a labor intensive enterprise with a

weak technological base, personnel assignment policies have important implications for the quality of service the organization provides. In large part, the assignment of a particular teacher to a program determines the substance and quality of that program. Therefore, when, as in 96 percent of the sample contracts, provisions establish the criteria by which employees are assigned or regulate the mechanics of assignment (either upon initial employment or reassignment to fill vacancies), they substantially influence the educational program offered and are, on balance, matters of educational policy.

Table 4 summarizes the percentage of sample contracts containing teacher assignment policy provisions, including provisions governing teacher selection, provisions governing change of teacher assignment within a building, provisions governing involuntary transfer of teachers between buildings, and provisions governing teacher reduction-in-force.

Teacher Selection. Table 4 shows that 84 percent of the sample contracts regulate the selection of teachers to fill vacancies. This selection is accomplished through the establishment of teacher "pools." Under these provisions, teachers are assigned to pools established by the contract. Pools are formed by grouping teachers who: (1) have been laid-off recently, (2) have requested voluntary transfer, (3) have been involuntarily transferred; (4) are returning from leave of absence, or (5) have been substitutes. Pools (1), (2) and (3) appear most frequently in contracts. Vacancies are filled by examining each pool (in the order specified by the contract) for teachers who meet the requisite criteria--most often seniority in combination with certification. For example, vacancies are typically filled by selecting from the first priority pool the most senior teacher who meets certification standards for the position. If no teacher in the first pool meets certification standards, teachers in the second pool are

TABLE 4
POLICY PROVISIONS GOVERNING TEACHER SELECTION AND PLACEMENT

	Policy Category	Percent of Contracts with Provision Present *
I.	**Teacher Selection**	84
II.	**Change in Teacher Placement**	
	A. **Within Building**	59
	Assignment within certification area only	31
	Criteria for selecting teachers for reassignment	35
	Deadline for reassignment	12
	Just cause required to reassign	9
	Other reassignment restrictions	9
	B. **Involuntary Transfer** of Teachers	60
	Within certification area only	19
	Just cause required to transfer	16
	Deadline for making transfers	6
	No disciplinary transfers allowed	6
	Permissible reasons for involuntary transfer established	6
	Limit on number of times a teacher may be involuntarily transferred	15
	No involuntary transfers allowed for some classes of teachers	13
	Volunteers transferred first	6
	Other involuntary transfer restrictions	14
III.	Teacher **Reduction-In-Force** (RIF)	68
	RIF permitted for specified reasons only	23
	No RIF allowed for some classes of teachers	20
	Criteria for selection of personnel RIF	63
IV.	**Total Policies Governing Teacher Selection and Assignment**	96

* The sum of subcategories exceeds the total because some contracts contain provisions from more than one subcategory.

considered in order of seniority, and so on. Forty-eight percent of the contracts establish three or more pools; 24 percent establish two; and 12 percent establish only one pool.

Change in Teacher Placement Within Buildings. A second group of policy provisions restricts the reassignment of teachers within buildings. As indicated in Table 4, 59 percent of the sample contracts contain one or more restrictions on changes in assignment within buildings. Thirty-one percent of the sample contracts contain provisions restricting the assignment of teachers to their certification area. This type of provision restricts educational programming because some state regulations permit teachers to teach outside their certification areas for at least part of their workday. School districts sometimes take advantage of this flexibility to maximize utilization of staff in their efforts to provide a comprehensive educational program. These efforts will be prohibited when contract provisions limit the assignment of teachers to their certification area.

Thirty-five percent of the sample contracts contain provisions establishing certain criteria that administrators must use to select teachers for reassignment. The criteria fall into the four categories: seniority (district and/or building), volunteers requested first, objective criteria (experience or educational background), and administrative judgment. However, the percentage of the sample that significantly regulates personnel assignment is inflated because one-half of the provisions in this category list "administrative judgment" as the major criterion. Technically, such a criterion, in combination with a binding arbitration provision, signifies that a third party may determine whether a reassignment decision made by an administrator was arbitrary. In practice, however, such a provision may do little to fix the educational program.

Twelve percent of the sample contracts contain a provision called a

"date certain requirement" establishing a deadline for notifying teachers of changes in assignment within the building. Most often these deadlines are dates well in advance of the start of the school year. The date certain requirement moves these provisions from "minimum fairness" notice to policy because it precludes certain decisions. For example, consider an elementary school building with three third-grade and three fourth-grade classrooms. Faced with an enrollment shift at the opening of school whereby there are more fourth graders and fewer third graders than anticipated, one logical solution would be to establish one third-fourth split class. A date certain notice requirement prior to the beginning of school would prevent any of the six teachers in the building from taking the new third-fourth class. Instead, someone outside the building would have to be transferred in, and one of the teachers in the building would have to be transferred out. Nine percent of the sample contracts provide that teachers can be reassigned only for "just cause." In its most restricted interpretation "just cause" requires simply that a decision not be arbitrary. Arbitrators, however, may measure employer conduct against a higher standard.[18]

Involuntary Transfer. A third group of policy provisions specify the conditions under which teachers can be transferred involuntarily. Table 4 shows that 60 percent of the sample contracts govern the involuntary transfer of teachers. Many of the conditions for involuntary transfer parallel those on teacher reassignment discussed above--within certification area only (19 percent), just cause required for transfer (16 percent), deadline for making transfers (6 percent), no disciplining transfers (6 percent), permissible reasons for involuntary transfer established (6

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[18] For a suggestion of the range of standards see Grievance Guide (1982, p. 1).

percent). In addition, 15 percent of the sample contracts place limits on the number of times a teacher can be involuntarily transferred. The range of these limits extends from a maximum of two transfers per year to a maximum of two transfers every ten years. Thirteen percent of the sample contracts exempt certain classes of teachers from involuntary transfer. Protected from transfers in various contracts are teachers over a prescribed age, teachers with a prescribed number of years of experience, teachers being considered for tenure, all tenured teachers, or all teachers. Finally, 6 percent of the sample contracts restrict the involuntary transfer of teachers by prohibiting involuntary transfers if volunteers are available, and 14 percent establish restrictions on involuntary transfers other than those listed above. Appendix E provides an example of a provision that includes some of the subcategories of restrictions on involuntary transfers discussed here, and highlights the potential such restrictions have for limiting a district's capacity to make teacher transfers.

Reduction-In-Force. Provisions governing reduction-in-force (RIF) are among the more numerous and complex of all the provisions analyzed in this study. Some of these provisions, such as those requiring that teachers be notified of an impending layoff or that the school board negotiate the impact of a layoff, are considered to weigh more heavily toward teacher working conditions and are not viewed as policy provisions. On the other hand, when provisions limit the conditions under which a reduction-in-force can be effected by the school board or set the criteria by which teachers are selected to be laid off or retained, they were considered policy.

Table 4 indicates that 68 percent of the sample contracts include provisions that govern the implementation of reduction-in-force. Twenty-three percent of the sample contracts contain provisions that limit the conditions under which a teacher reduction-in-force is permitted. The

most commonly identified permissible reasons are declining enrollment, financial exigency, and program change or elimination. Twenty percent of the sample contracts prohibit reduction-in-force for certain classes of teachers. One provision exempts minority teachers from RIF; another excludes teachers about to retire. Three contracts from large districts prohibit RIF for any tenured teacher. Four other contracts require that the district negotiate the reduction-in-force decision with the union. Such constraints on a district's ability to tailor the size of its instructional staff to the district's needs or resources are among the most powerful policy provisions identified in this study.

In addition, 63 percent of the contracts in the sample set criteria for selecting personnel to be laid off or retained. Of these, 26 percent prescribe seniority as the sole basis or the primary criterion for selecting personnel for lay off. Thirty-four percent call for the use of seniority after consideration of objective criteria (training, certification) and/or affirmative action. Thus, seniority is the most prevalent criterion regulating personnel selection during reduction-in-force although it is often considered in conjunction with certification and affirmative action.[19]

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[19] In the private sector, the use of seniority as a reduction in force (RIF) criterion is a mandatory subject for bargaining because it is considered to be almost exclusively an aspect of the relationship between employer and employee rather than a matter of entrepreneurial control. See Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). Some public sector jurisdictions have followed the private sector precedent and have concluded that the use of seniority in layoff and recall decisions has a greater effect on teacher working conditions than on educational policy. See Boston Teacher Union Local 66 v. School Committee of Boston, 434 NE.2d 702 (Mich. 1981). This conclusion is supported by several arguments. First, the interests of private and public sector employees in working conditions, including the order of layoff and recall, are similar. Second, in both instances the employer retains the policy prerogatives/entrepreneurial control to hire, to fire for cause and to determine when a RIF is required. Therefore, it is not necessary for employers to determine unilaterally whether seniority will be bargained as an RIF criterion. Third, as the use

Independent Variables

After determining the extent of policy bargaining in sample contracts, the relationship between independent variables and the incidence of policy bargaining in the 80 sample contracts was examined. Table 5 summarizes the results of cross-tabulations between four independent variables and ten policy variables identified in the sample contracts.

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of seniority as a RIF criterion applies specifically to schools, teachers often point to experience under fire as the mark of their competence because they cannot point with pride to the rigor of their professional training. (Lortie, Schoolteacher, p. 160). This perspective leads to the presumption that senior teachers provide better instruction than junior teachers.

However, some public sector jurisdictions recognize that the RIF of public employees, particularly teachers, involves issues that are qualitatively different from those in the private sector. In these jurisdictions substantial weight is given to teacher qualifications. Where state law calls for the use of certification or other qualifications, school boards and teacher unions may not bargain strict seniority clauses common in the private sector. See City of Beloit vs. Wisconsin Employment Relations Commission, 242 WW.2d 231 (Wisc. 1976); Honeoye Falls-Lima Central School District v. Honeoye Falls-Lima Education Association, 402 NE.2d 1165 (N.Y. 1980).

Other jurisdictions have given even more weight to the qualitative differences between the private and public sectors and have concluded that the use of the seniority criterion in a teacher RIF has important policy implications that outweigh the effects of the use of this criterion on teacher working conditions. Although recognizing that teachers have strong interest, as do their private sector counterparts, in deciding the order of layoff and continued employment, these jurisdictions give more weight to the effect of layoff/recall criteria on the District's authority to determine curriculum, courses of study and educational activities offered, and the qualifications and quality of personnel required to implement the educational program. These jurisdictions also find that differences between private and public sector employers are demonstrated by the web of statutory limits which direct school district functions and circumscribe their authority. Accordingly, these jurisdictions conclude that if state law describes teacher qualifications, it preempts bargaining over the subject. For these reasons, proposals to use seniority as a layoff/recall criterion are either permissive or prohibited subjects for bargaining in these jurisdictions. See Parsons-National Education Association v. United District No. 503, 593 P.2d 414 (Kan. 1971); also see State Employees Association of New Hampshire v. New Hampshire Public Employee Labor Relations Board, 397 A.2d 1035 (1978); State of New Jersey v. State Supervisory Employees Association, 393 A.2d 233 (NJ. 1978).

Table 5

CROSS TABULATIONS: INDEPENDENT VARIABLES X POLICY VARIABLES IN SAMPLES CONTRACTS

Independent Variables	Districts in sample	POLICY VARIABLES (expressed in percent of sample contracts with variable present)									
		SpEd Class Size	SpEd Student Placement	SpEd Curr.	RegEd Class Size	Student Discipline	Teacher Selection Pools	Change in Building Assignment	Involuntary Transfer Restrict.	RIF Restrict.	RegEd Curr.
A. Strike Laws											
1. Strikes Legal	16	13	13	13	13	38	88	19	19	63	19
2. Strikes Not Legal	64	36	20	17	38	75**	83	69**	70**	73	50
B. Percent of State Workforce Unionized											
1. Less than 27%	49	18	6	6	25	61	80	45	55	61	16
2. More than 27%	31	55**	39**	32**	45	77	90	81**	68	87**	87**
C. Affiliation											
1. AFT	38	35	20	23	30	60	83	58	58	70	53
2. NEA	36	24	15	9	32	74	85	56	65	71	32
3. Independent	6	50	33	17	50	83	83	83	50	83	50
D. Number of Pupils Enrolled (thousands)											
1. 15-24	37	19	19	14	24	54	78	43	65	73	35
2. 25-49	25	40	24	8	32	72*	88	76*	60	64	44
3. 50+	18	44	11	33	50	88	89	67	50	78	61

* = Significant by X^2 beyond .05 level ** = Significant by X^2 beyond .01 level

McDonnell and Pascal found that state laws exerted some measurable influence over local bargaining outcomes in education, although they concluded that local factors were far more influential (1979, pp. 28-29). Similarly, our results indicate a small, but persistent, difference in policy bargaining outcomes associated with differences in state laws regulating teacher strikes. State laws permitting teacher strikes are associated with a tendency for the parties to negotiate fewer policy provisions. This tendency is significant in four policy categories: student discipline, change in assignment within buildings, involuntary transfer restrictions, and regular curriculum.

When the percentage of union membership in a state's private-sector, nonagricultural work force is cross-tabulated with the extent of policy bargaining, a stronger relationship is observed. Teachers in states with more than 27 percent of the private sector, nonagricultural work force unionized are consistently more successful in bargaining educational policies than teachers in less unionized states. For six of the ten policy variables examined the differences are statistically significant. These variables are: special education class size, special education student placement, special education curriculum, change in building assignment, reduction-in-force restrictions, and regular education curriculum.

In contrast, and in accord with McDonnell and Pascal (1979) and Yates (1978), no consistent relationship is observed between the particular affiliation of the local teacher union (AFT, NEA, or independent) and the negotiation of educational policy. Similarly, with the exception of bargaining over student discipline and change in building assignment policies in districts of 25,000 to 49,000 students, the negotiation of educational policies does not co-vary with the size of school district enrollments.

Interview Results

Interviews were conducted in six of the sample districts to (1) gauge the degree of conformity between contract language and actual district practices; (2) discover how quickly teacher organizations and school boards have negotiated provisions regulating education of handicapped students in response to judicial decisions and state or federal legislation; and, (3) determine whether the Contract Provision Analysis Form was complete. The interviews also underscored the fact that negotiated policy provisions may have unforseen consequences. Likewise they served to remind researchers of the pitfalls inherent in reading and interpreting collective bargaining agreements removed from the local histories and circumstances that provide the contexts for contracts.[20]

Policy Implementation

Interviewers checked for conformity between contracts and district practice on 90 policy provisions in the six interview districts. The interviews disclosed a greater degree of conformity between contract language and its implementation than has been suggested in previous research, particularly on matters of policy.

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[20]Several dozen people met and talked with us. To them we express our thanks and acknowledge our debt. Though several were interested in assurances that the sources of the material would remain anonymous, only one person in six school districts refused to allow conversations to be recorded. Our guarantee of confidentiality conforms to the protections afforded by the University of Oregon Graduate School's policies on research with human subjects.

All negotiated educational policy provisions were implemented.[21]

Indeed, interviews demonstrated that policy provisions will be implemented even when the consequences of their implementation are not anticipated. In one district, for example, the impact of a reduction-in-force provision has extended well beyond what the negotiators might have forseen. Educators' lives in this district have never been tranquil. Through the decade of the 1960s annual enrollment increases of 800 to 1000 students necessitated expansion in the physical plant, large increases in staff, and even double shifts. By the mid-1970s, having met the demands imposed by sheer numbers, the district decided to create a model professional development program. Resources were used to create a demonstration school staffed by selected teachers. Other teachers were released for week-long periods for inservice training in the demonstration school; they received continued coaching and support in their home school.

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[21]Interviewers discovered one possible exception. In a special program for severely disturbed youngsters, the program administrator acknowledged that the staff met informally to evaluate each other and the program administrator as well. Both types of evaluation were prohibited -- the first by the teachers' contract with the school board; the second by board policy. Would the informal peer evaluation sessions be judged contract violations? Certainly, a teacher might file a grievance, for the contract prohibits peer evaluation. However, the contract also requires "meaningful teacher involvement in educational programs." Finally, both the teachers and administrator have agreed that the material from informal discussions could not be used in the formal evaluation process. When asked whether other groups of teachers and administrators operated in a similar fashion we were told: "I would doubt it. From what I've seen, it's not happening in other buildings." Other interviews confirmed the accuracy of the administrator's observation.

Not long after this professional development program began, a nationwide recession took its toll on the local economy. When thousands of workers were laid off, the district enrollment began a precipitous decline, and the district implemented the reduction-in-force policy that had been negotiated earlier at a time of enrollment increases.

When the seniority and certification-based bid and bump process was initiated the first program casualty was the demonstration school.[22] As one central office administrator exclaimed: "Demonstration schools are no damn good if you can't keep your staff." Since the beginning of the period of declining enrollment, 89 percent of the teachers in the district have been transferred at least once. At the outset of the 1982-83 school year, 24 of the teachers at one of the junior high schools had been newly reassigned, while at one of the elementary schools all but three teachers were new to the building.

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[22]The contract specifies that the first priority criterion in teacher layoff decisions is seniority and the second is certification area. According to interviews, this provision is intended to insure that the least senior teachers in the district are always the first to be laid off. Achieving this goal may require complex teacher transfers somewhat akin to musical chairs. If a teaching position in one teaching area is lost, it is not enough to lay off the least senior teacher in the district whose position could be filled by a more senior staff member. Rather, if a science teaching position is cut, it is conceivable that the most senior science teacher (whose position is secure) might be transferred to his or her second area of certification so that a less senior science teacher with only one area of certification could be retained. For example, a 12-year science teacher could, in effect, "bump" a 25-year science teacher also certified in driver education who could then "bump" an 11-year driver education teacher. Thus, the teacher being laid off would have less seniority than either of the two teachers retained.

The implementation of the RIF provision had serious effects on people as well as programs. Although one teacher, who had been transferred seven times in the last ten years, commented that the most recent transition was "the smoothest transition ever," another was hospitalized as a result of pressure generated out of an unsuitable assignment. A central office administrator admits that "If they [teachers] were seeking to be employed where we have some of them presently, they would never have gotten a job." Principals recall "the good old days" when they interviewed and hired teachers. With persistent reduction-in-force causing annual transfers of teachers, the principals now refer to themselves as mere "greeters."

In another district, the class-size policy provision limiting enrollment in special education programs combines with nonpolicy provisions requiring notice prior to transfer to create another example of unanticipated consequences that result from the implementation of contract language. Whenever additional staff are required because enrollments exceed projections and class-size limits, substitutes are assigned during the first six weeks of the school year until permanent teachers can receive adequate notice of assignment as specified by the contract. Paraprofessionals, also under contract, "float" until their bid and bump process determines placement for the year. In the meantime, what happens in the middle school's program for multiply-handicapped youngsters? Since some teachers and aides who normally work with handicapped youngsters are not assigned to the program at the start of the school year; and, because the substitute teachers and temporary aides are inexperienced, the physical therapists use their normal therapy time to assist in feeding. "You see," the principal said, "you're robbing Peter to pay Paul, just to keep the operation going."

Responses to Courts and Legislatures

Researchers investigated how quickly school boards and teacher organizations would bargain over judicially or legislatively mandated handicapped education policies. In the six interview districts, the histories of bargaining over special education topics varied. In one, the district's special education program had come under court scrutiny in the early 1970s, and bargaining over handicapped education stemmed from judicial decisions. In two others, state legislation preceded national legislation, and bargaining followed quickly. In three districts, where neither judicial decisions nor state legislation preceded the enactment of P.L. 94-142, the federal law spurred negotiation of special education policy.

In one district, the teacher organization officer responsible for representing union concerns regarding special education described the reaction to the Education for All Handicapped Children Act of 1975:

> The law was so overwhelming, and I'm sure that this school system wasn't unique in its response. It was just a major task to try to implement the law. So much of what happened was very chaotic. So we took our concerns to the bargaining table.

This analysis was mirrored by a counterpart in the district's central office:

> We went through, and we're still going through, an infinite variety of growing pains that came along with the 94-142 regs. So from 1975 until 1982 we were still in a growing stage...and throughout the nation we've seen a switch in attitudes that undoubtedly is reflected in attitudes of regular and special educators. Up until 1975 philosophically we thought we were on good sound grounds in isolating children with special problems with special teachers and special materials in self-contained classrooms....Everybody thought that what we were doing was right. With 94-142 they said what we were doing was wrong.

Both informants acknowledged that the collective bargaining process had been used to address the immediate issues emerging from the implementation of P.L. 94-142. Indeed, not only have provisions on Individualized Education Programs (IEPs) and mainstreaming been negotiated, the school board and teacher organization in this district have bargained a special appeals procedure for matters related to the placement of handicapped students. Furthermore, they have begun to discuss the ramifications of provisions previously negotiated in response to P.L. 94-142. For example, they are now considering what assignments might be given to special education teachers who have been freed from one class each day because their students are being taught by instructors who have been hired or retrained in response to the mainstreaming or curriculum policies negotiated only four years before. In this district it is clear that the current impetus for negotiations springs not from P.L. 94-142, but from the contractual agreements that were negotiated in response to the law. That is, the school board and teacher organization have quickly bargained a second and even third generation of issues in response to the Education for All Handicapped Children Act of 1975.

Contract Provision Analysis Form

Since the Contract Provision Analysis Form is intended to provide practitioners and researchers with a means of analyzing other collective bargaining agreements the form needed to be comprehensive enough not only for the purpose of the present undertaking, but for more general purposes as well. In the first two on-site interview districts, one of the specific concerns was whether the insights of people who were familiar with both the district bargaining agreement and the local environment would force a recognition that something had been overlooked in the development of the

form. Responses indicated that the form was an adequate guide for identifying and categorizing both educational policy provisions and significant nonpolicy items. This "finding" is merely a statement of confidence. Its accuracy can be verified only after others utilize the Contract Provision Analysis Form.

Regardless of its comprehensiveness, the form does not indicate to an analyst which of the policy provisions or combinations of provisions in an agreement are most important in a particular school district at a particular time. Local circumstances highlight some features of the contract as was demonstrated by the fact that the two teacher organizations that have negotiated the greatest number of policy provisions among our sample contracts are at loggerheads over their approach to peer evaluation. In one district a contract provision prohibits peer evaluation, and this provision was cited by the union to forestall implementation of a teacher consultant program that would have had two teachers working with students in the same classroom. In the other district, the teacher organization recently culminated more than a decade long effort to negotiate a provision granting teachers the responsibility for evaluating first year instructors. Under this provision, administrators may not evaluate probationary teachers until their second year. In 1980-81, 19 new teachers were hired; the peer evaluation committee retained 17.

In other districts that have bargained nearly comparable numbers of educational policy provisions, the most pressing local concerns may not be over matters we defined as educational policy. For example, in one interview district the school administration and teachers presently share the view that the nonpolicy contract provisions concerning mutual consultation and teacher involvement are especially important. In this district of fewer than 22,000 students, the teacher organization and school administration strain to

overcome the effects of a relationship that was described by them as "probably the worst in the country." Recently, during a single school year, 104 grievances were arbitrated. At the heart of the earlier ill-will between teachers and the district was a drastic reduction-in-force that occurred in the mid-1970s, one that an arbitrator later determined had been conducted in violation of the contract.

Status Quo and Grievance Procedure Provisions

Researchers identified all maintenance of standards, agreement has precedence, duty to bargain and subcontracting provisions in the sample contracts. This group of clauses is referred to as "status quo provisions." Also identified were provisions that described the mechanism for enforcement of other contract provisions--grievance procedures. In most cases, these provisions regulate employees' terms of employment; only rarely do they fix some portion of the educational program and thereby achieve policy status. Insofar as they merely regulate working conditions of teachers they are not properly considered policy. Nevertheless, even when they do not establish policy, they have the potential to exert considerable influence over educational programs, particularly as they act in combination with contract policy provisions. Table 6 describes the percentage of sample contracts that contain these provisions.

TABLE 6
Status Quo and Enforcement Provisions

Variable	Percent of Contracts with Provision Present
1. **Maintenance of Standards**	20
2. **Agreement Has Precedence**	70
3. **Duty to Bargain**	34
4. **Subcontracting**	49
5. **Arbitration**	93
a. Advisory	14
b. Binding	79
(1) Contract Only	33
(2) Contract and External Policies	46

Maintenance of Standards

Maintenance of standards clauses preserve extant conditions of teachers' employment for the term of the collective bargaining agreement. Consider the following example.

> Except as this Agreement shall hereinafter otherwise provide, all wages, hours, and conditions of employment in effect at the time this Agreement is signed, as established by the rules, regulations and/or policies in force on said date, shall continue to be so applicable during the term of this Agreement. It is recognized that rules and regulations referred to above may differ from one school to another.

Contract provisions such as this prohibit the school district from making decisions that detrimentally affect teacher conditions of employment. For example, a school board intending to transfer or reassign a teacher whose employment is regulated by the above provision would find several alternatives unavailable at the outset. Whatever else the board intended to accomplish with the transfer, it could not subject the teacher to a reduction in compensation, longer hours, or a loss of any benefit teachers had enjoyed

at the time the contract was signed. If, in addition to a maintenance of standards clause, the contract contains a policy provision that specifically restricts acceptable reasons for teacher transfers, the reassignment of personnel may be seriously constrained by the combination of the specific contract policy provision and the maintenance of standards clause.

Agreement Has Precedence

Examination of sample contracts reveals that agreement has precedence clauses impose two types of restrictions. First, they may require that, in the event of conflict between contract policy provisions and other local educational policies, contract policies will control. Second, they may incorporate into the contract school district regulations that are not in conflict with the contract. To the extent that an agreement has precedence clause incorporates school district educational policies (as the term is defined in this study) external to the contract and subjects those external policies to the contract grievance procedure, the clause would itself be a matter of policy. Commonly, however, agreement has precedence clauses limit arbitration over incorporated district regulations to those that set conditions of employment (mandatory subjects for bargaining). Thereby, the potential for agreement has precedence clauses to determine educational policy is mitigated. For example, one agreement has precedence clause provides:

> This agreement shall modify, replace, or add to any policies, rules, regulations, procedures, or practices of the district which shall be contrary to or inconsistent with its terms. The provisions of this agreement shall be incorporated into and become a part of the established policies, rules, regulations, practices, and procedures of the district. All existing personnel policies dealing with mandatory subjects of bargaining, not modified or inconsistent with this agreement, are hereby incorporated and made a part of this agreement.

The primary effect of this provision is to permit employees to subject regulations, written or established through past practice, to the interpretation and enforcement by an arbitrator through the contract grievance procedure.[23] Thus, an agreement has precedence clause may provide a means for employees to require the district to continue current methods of operation--even those established informally over a period of time. For example where a contract requires one teacher preparation period per day but the school district has allowed two for several years, an agreement has precedence clause may require the district to continue to provide two preparation periods. In this manner agreement has precedence clauses may contribute to the maintenance of the status quo.

Duty to Bargain

A duty to bargain clause like the one below ensures that changes in any local policies affecting the working conditions of teachers will be negotiated with the teacher union prior to implementation.

> The Board and its representatives shall take no action violative of, or inconsistent with any provision of this Agreement. The Board further agrees that it and its representatives will not take any action affecting other working conditions of teachers without prior adequate negotiations with the Union.

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[23] This, of course, presumes that the contract provides for binding arbitration of grievances--as did 79 percent of the contracts in our sample.

Since such provisions primarily relate to teacher working conditions, they are not matters of policy.[24] Nevertheless, as they combine with contractual restrictions on policy decisions they serve to circumscribe school district discretion. For example a contract may establish a policy limiting the acceptable reasons for which a district may lay off teachers and/or listing the criteria to be used for selecting employees to be retained during a layoff. A duty to bargain clause, like the one above, may additionally require that the district negotiate the impact of the layoff on bargaining unit members.

Subcontracting

Subcontracting provisions protect bargaining unit members' work from being awarded to nonunit members. An example of such a provision is the following:

> Nothing in this section shall preclude the utilization of non-teacher personnel to supervise these activities; however, teachers shall be given preference when assigning such duties provided such position is not presently filled by a non-teacher.
>
> Summer openings will be filled first by regularly appointed teachers in the District.

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[24] Some state laws provide that school boards must bargain changes in working conditions with the teachers' union. Failure to meet the duty to bargain is actionable before the state labor relations agency as an unfair labor practice. In such states the primary effect of a provision like the one quoted here is to provide a change of enforcement forum (assuming the contract provides for arbitration) from the state agency to arbitration.

Since most are primarily related to the economic welfare of teachers, they seldom are considered to weigh heavily toward fixing the educational program of the district.[25] Nevertheless, such provisions may have a strong influence on personnel decisions. A subcontracting provision may prohibit, for example, a school board from discontinuing classes for the handicapped, formerly staffed by bargaining unit members, in favor of having them provided by state agencies or private contractors. By establishing prior restraints on the assignment of school district work, such a provision imposes restrictions on the manner in which a school board determines the size and organization of its work force. Clearly, as subcontracting provisions combine with other contract restrictions on the assignment of personnel, and with the contract grievance procedure they become a significant force for maintaining the status quo.[26]

Grievance Procedures

Labor relations experts commonly refer to the grievance procedure as the "cornerstone" of the collective bargaining agreement (Elkouri and Elkouri 1973, pp. 106-7).[27] They recognize that a readily available and effective enforcement mechanism plays a major role in assuring that the mandates of contract provisions are translated into practice.

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[25] See Fibre Board Paper Products Corp v. N.L.R.B., 379 U.S. 203(1964), for a discussion by the U.S. Supreme Court of the relatively complex test used for determining when a subcontracting provision establishes policy in the private sector.

[26] Ninety-two percent of the contracts that contained subcontracting provisions provided for binding arbitration.

[27] See also United Steelworkers vs. Warrior and Gulf Navigation Co. 80 S.Ct. 1347, 1352 (1960).

Ninety-three percent of the sample contracts provide for resolution of disputes over the implementation of contract provisions by a neutral third party--an arbitrator. Seventy-nine percent of the sample contracts provide binding arbitration over contract disputes, and almost half the sample contracts (46 percent) provide that arbitrators will resolve disputes over at least some local school board policies, rules, regulations, and practices in addition to provisions contained in the collective bargaining agreement.[28]

Special Education and Working Conditions

To provide school personnel and public policy makers with complete baseline data on special education-related provisions in the sample contracts, provisions affecting the working conditions of teachers of handicapped pupils were identified along with policy provisions impacting educational programs for the handicapped. Such data also provide a basis for examining the assertion by Mitchell and colleagues (1981) that special education teachers exercise only minimal influence on the union's bargaining agenda.

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[28]Grievance procedures may themselves rise to the level of establishing educational policy. See Appendix D for a brief discussion of policy/nonpolicy grievance procedures.

Table 7 indicates the percentage of sample contracts containing provisions related to the education of handicapped students. Forty-four percent of the sample contracts include policy provisions governing the education of handicapped pupils. Forty percent of the contracts address handicapped student placement and 15 percent address special education curriculum. Sixty percent of the sample contracts include nonpolicy provisions that more directly affect teachers' working conditions than the educational program of handicapped pupils. Sample contracts provide: (1) the right of teachers to be notified of, or make recommendations on, student placement decisions (18 percent); (2) teacher compensation or release time for completing Individualized Education Programs (IEPs) or attending parent conferences (18 percent); (3) teacher training for working with handicapped pupils (20 percent); (4) an increment in addition to the base salary for teaching handicapped pupils (38 percent); and (5) committees to study the problems of special education (23 percent).

Some perspective on the frequency with which these provisions appear in the sample contracts is provided by comparing these results with those of an earlier study on bargaining over special education-related provisions. Sosnowsky and Coleman (1971) examined 71 collective bargaining agreements from Michigan school districts for provisions with direct or indirect effects on special education.[29] Although the description of their criteria for categorizing provisions makes comparison difficult, Table 8 summarizes the

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[29]It should be noted that this study predated most of the important judicial decisions regarding the rights of handicapped students (e.g. Pennsylvania Association for Retarded Citizens v. Pennsylvania, 343 F. Supp 279 (1979), Mills v. Board of Education of D.C. 348 F. Supp. 866 1972), and the enactment of PL 94-142.

TABLE 7

PROVISIONS RELATED TO THE EDUCATION OF HANDICAPPED STUDENTS

Provision	Percent of Contracts with Provision Present
Policy Provisions	44
Curriculum	15
Programs Offered	9
Teaching Method/Materials	9
Student Placement	40
Class Size Limits	31
Class Placements[1]	19
NonPolicy Provisions	60
Minimum Fairness-Student Placement Decisions	18
Teacher Notified[2]	13
Teacher May Appeal or Recommend[3]	8
Compensation/Release Time for NonTeaching Duties	18
Individualized Education Programs (IEPs)	15
Parent Conferences	8
Training for Teachers of Handicapped Pupils[4]	20
Special Education Teachers	15
Regular Teachers	10
Extra Pay for Special Education Teachers	38
Special Education Study Committee	23

1. Constraints on the placement of handicapped students into regular or special education classes.

2. Teachers are given notice before any handicapped students are placed in their classes.

3. Teachers are given the opportunity to appeal, or make recommendations on, the placement of handicapped students.

4. Inservice or other training provided at board expense to improve teacher skills at managing and/or educating handicapped students.

TABLE 8

PERCENTAGES OF SAMPLE CONTRACTS CONTAINING SELECTED SPECIAL EDUCATION-RELATED PROVISIONS

Provision Category	Sosnowsky and Coleman 1971	Goldschmidt et al. 1981-82
Policy Provisions		
1. Curriculum (programs offered or teaching methods/materials)	0	15
2. Class Size Limits	34.3	31
3. Placement of Handicapped Students	1.3	19
NonPolicy Provisions		
1. Minimum Fairness-Student Placement Decisions	0	18
2. Compensation/Release Time for IEPs or Parent Conferences	0	18
3. Training for Teachers of Handicapped Students	2.9	20
4. Salary Increments for Special Education Teachers	60.5	38
5. Special Education Study Committees	5.6	23

percentage of contracts in the two samples that contain comparable provisions. First, with almost identical frequency, contacts from the two samples contain special education class-size limit provisions. Sosnowsky and Coleman noted that the class-size provisions in their sample of districts in Michigan incorporated the limits contained in state law. The present study substantiates this finding for a national sample of contracts. Second, although Sosnowsky and Coleman reported that only one of their contracts regulated the placement of handicapped pupils into special education classes, and no contracts regulated special education curriculum, provisions in those two categories, respectively, appear in 19 and 15 percent of the contracts in the present study. Third, our more recent sample of contracts contains a greater proportion of nonpolicy provisions than Sosnowsky and Coleman's 1970 sample in the areas of teachers rights regarding student placement decisions, compensation or release time for nonteaching duties, training for teachers of handicapped pupils, and committees for the study of special education problems. However, a smaller percentage of the contracts in the present study provide extra pay for special education teachers.

Unlike Sosnowsky and Coleman, Mitchell and colleagues (1981), in another later study of collective bargaining agreements, did not focus specifically on bargaining over special education. However, they suggested that "collective bargaining is almost exclusively concerned with structuring the working relationships between teachers working in regular classrooms and the line administrators who supervise them" (Mitchell et al. 1981, p. 157). The results of the present study do not appear to support this contention. Even after taking into account those provisions that appear to be designed to ameliorate the impact of students being mainstreamed into regular classes, there remains a sizable group of provisions providing benefits exclusively to

special education teachers.[30] Mitchell and colleagues further suggest that "teacher organizations have a great deal of difficulty supporting the interests of specialists" (Mitchell et al. 1981, p. 157). Nevertheless, it is difficult to agree that benefits such as those reported in this section can accrue to a group of teachers whose interests have little influence at the bargaining table.

In sum, teacher bargaining agreements reflect a sensitivity to at least one emerging educational issue that is national in scope: the education of the handicapped. The findings of this study reveal a relatively significant showing of provisions that relate both to special education policies and to the working conditions of teachers of the handicapped.

A Followup of McDonnell and Pascal: "NonCompensation" Provisions

In their study of teacher collective bargaining McDonnell and Pascal suggested that the "future real gains of organized teachers will likely not equal those made between 1965 and 1975" (1979, p. 83). One objective of this study was to determine whether the bargaining of noncompensation items of the type identified by McDonnell and Pascal had leveled off.

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[30] We realize that the interests of regular teachers and specialists sometimes conflict and that the fears of regular teachers, (for example of having special students "dumped" on them) may account for a certain number of policy provisions that regulate mainstreaming or establish student placement appeals processes. It is also the case, however, that such provisions can be used -- and are used -- by specialist teachers for their own purposes (for example, to prevent movement of students out of their classes). The interests of special education teachers may be maintained even when a contract provision was negotiated to serve the interets of the regular teachers. Though the sources of their fears may differ, both regular and special education teachers may oppose either too much or too little mainstreaming.

In their study, McDonnell and Pascal analyzed a national sample of teacher bargaining agreements from the 1970 and 1975 contract years. One of the purposes of their analysis was to determine the types of noncompensation provisions that had been included in teacher contracts and the extent to which bargaining over those provisions had increased during the 1970-75 period. They developed a list of 14 noncompensation provision "domains." Ten were found to be well represented in their sample of contracts while four appeared in fewer than 3 percent of the sample contracts. They then chose a "key provision" in each of the ten domains (one found in substantial numbers of contracts) for purposes of their statistical analysis. (McDonnell and Pascal 1979, pp. 8-11). Five of the "key provisions" could be compared with similar provisions from our study. Table 9 shows a frequency comparison of those provisions, identified according to virtually the same criteria in both studies. This table indicates that, contrary to the expectations of McDonnell and Pascal, the bargaining of key noncompensation provisions between 1975 and 1981 has increased at approximately the same rate as it did between 1970 and 1975.

In addition to those provisions displayed in the table, our 1981 sample revealed major increases in the bargaining of provisions from three of the four domains that appeared in less than 3 percent of McDonnell and Pascal's sample contracts: federal programs, inservice and professional development, and voluntary transfers.[31]

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[31]The fourth "domain," student grading and promotions, was not examined in our study.

TABLE 9

THE INCLUSION OF SELECTED PROVISIONS IN TEACHER COLLECTIVE BARGAINING AGREEMENTS: 1970, 1975, 1981-82

Types of Provision		Percentage of Sample Contracts Containing Provisions		
		McDonnell & Pascal 1970	McDonnell & Pascal 1975	Goldschmidt, et al. * 1981-82
Grievances	(1)	70	83	93
Pupil Exclusion	(2)	28	46	61
Assignment Refusal	(3)	22	27	31
Maximum Class Size	(4)	20	34	49
RIF Procedures	(5)	11	37	68

(1) All grievances alleging a violation of the contract are subject to arbitration.

(2) A teacher may temporarily exclude a disruptive pupil from class, has the right to refuse to re-admit a pupil, or may refuse to re-admit a pupil until a conference with parents or guardians has been held.

(3) A teacher may refuse an assignment to a position outside his or her certification area.

(4) Absolute class size limits are set, or some type of compensation is provided if contract imposed limits are exceeded.

(5) Staff may be reduced only for reasons listed in the contract and/or seniority is a criterion for staff reduction.

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*Any discrepancies between the percentages reported here and those tabulated under similar categories in previous sections of this chapter are due to the fact that the Goldschmidt et al. numbers include both policy and nonpolicy provisions since both categories of provisions are included in the McDonnell and Pascal totals.

Because our study focused, in part, on descriptions of bargained provisions that affect the education of handicapped students, an attempt was made to assess the extent to which sample contracts contained provisions related to one federal program, The Education for All Handicapped Children Act of 1975 (P.L. 94-142). It could not be assumed that all provisions related to the education of the handicapped were bargained in response to P.L. 94-142, since as previously noted in our interview results, state law and court orders also played an important role. Nevertheless, certain provisions can be tied specifically to P.L. 94-142.[32] For example, 15 percent of the sample contracts provide additional compensation to special education teachers for extra work in structuring Individualized Education Programs (IEPs), a direct consequence of P.L. 94-142. Twenty-three percent of the sample contracts create special education study committees, many of which were given an explicit mandate to investigate the potential effects of P.L. 94-142 requirements. In addition, there were other provisions, both policy and nonpolicy, that relate to programs for handicapped students and may have been a consequence of P.L. 94-142.

Bargaining over inservice and professional development, a second type of provision that McDonnell and Pascal found in less than 3 percent of their sample contracts, has also increased substantially since 1975. For example, 27 percent of the sample contracts specify the content of inservice programs, 38 percent require teacher involvement in developing the content of teacher inservice programs, 24 percent set limits on the number or schedule for inservice programs, and 10 percent provide for the retraining and/or recertification of teachers at school board expense.

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[32] Other sample contract provisions referred to other federal programs, such as Title I of the Elementary and Secondary Education of 1965. Such provisions were not within the scope of this study and were not tabulated.

Finally, McDonnell and Pascal found only insignificant numbers of provisions related to voluntary transfers. While our study did not isolate all the provisions regulating voluntary transfer, it should be noted that 60 percent of the sample contracts identify a voluntary transfer pool for purposes of filling vacant positions.

To summarize, insofar as it was possible to make frequency comparisons between provisions identified in both samples of contracts, it appears that the bargaining of "noncompensation" items remains very much on the agenda of organized teachers in 1981. Provisions bargained in significant numbers by 1975 were bargained in even greater numbers by 1981. Provisions bargained in very few 1975 contracts are bargained in a significant number of 1981 contracts. As of 1981, it does not appear that bargaining over noncompensation provisions has peaked.

CHAPTER IV. SUMMARY AND CONCLUSIONS

Bargaining over traditional matters of educational policy is more widespread than previously described or predicted. Another increasingly common practice is the bargaining of certain nonpolicy status quo provisions that freeze working conditions during the life of the contract and thereby broadly limit school district discretion, particularly when the status quo provisions interact with policy provisions. Our research also demonstrates that teacher organization and school board collective bargaining is sensitive to new policy issues, specifically those related to the education of handicapped students.

Our findings lead us to suggest that three widely accepted conclusions from previous research can be discarded or modified. Certainly, bargaining over noncompensation items had not peaked by 1975 as McDonnell and Pascal (1979) predicted. Second, although Mitchell et. al. (1981) indicated that the interests of special education teachers were rarely supported in collective bargaining agreements, we found to the contrary that the concerns of special education teachers are reflected in bargaining agreements. Finally, our research appears to contradict the conventional wisdom that collectively bargained policies do not determine actual practices.

These conclusions derive from the analysis of 80 randomly selected collective bargaining agreements from school districts with enrollments of 15,000 or more students. Contracts were analyzed using a balancing test developed by state courts and labor relations agencies to determine whether particular provisions in the area of curriculum, student placement, and teacher selection and assignment direct the development and implementation of a district's educational program or primarily affect teachers' conditions of employment. The extent of bargaining in each of these three categories is

briefly summarized.

Forty-six percent of the sample contracts contain clauses establishing some aspect of curricular policy. Forty-five percent establish policy for the general educational program by specifying the programs to be offered, teaching methods or the materials to be used, and categories of personnel to be employed. Fifteen percent of the sample contracts establish curriculum policy for special education programs.

The second type of educational policy in the sample contracts governs the assignment of students. Sixty-four percent of the contracts contain policies regulating two aspects of student assignment: absolute class size limits (43 percent) and constraints on the placement of handicapped students and/or students who violate school rules (51 percent).

Finally, virtually all (96 percent) of the sample contracts regulate some aspect of teacher selection and assignment policy. Included in this category are policy provisions regulating the selection of personnel to fill vacancies (84 percent), establishing rules governing changes in teacher assignments within buildings (59 percent), regulating transfers of teachers between buildings or programs (60 percent), or specifying conditions under which school boards can reduce the size of the work force and the criteria for personnel selection during a layoff (68 percent).

Beyond describing the extent of bargaining over these three categories of educational policy, the study examined the relationships between the presence of educational policies in collective bargaining agreements and the national affiliation of the local teacher union, the number of pupils enrolled in the district, state laws permitting teachers to strike, and the percentage of the unionized, private sector, nonagricultural work force in the state. Analysis revealed a small but persistent positive relationship between the absence of a state law permitting teachers to strike

and the incorporation of educational policies in bargaining agreements. There was a stronger positive correlation between a highly unionized private sector, nonagricultural state work force and policy bargaining. No consistent relationship was observed between policy bargaining and particular national teacher union affiliation or number of pupils enrolled in the district.

In addition to finding that educational policies have been bargained to an extent not previously recognized or predicted, interviewers found that such policies were indeed implemented. In each of the six interview districts, teachers, administrators, and negotiators all agreed that policy provisions uniformly prescribed practice in these districts.[33] Unlike traditional expressions of school board policy that often describe outcomes in idealistic terms, the language of collective bargaining agreements both delineates and delimits behavior.[34] And just as contract policies

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[33]This finding of consistent implementation stands in contrast to the burgeoning literature devoted to analysis of slippage between policy and practice. See, for example, Bardach 1977; Easton 1965; Elmore 1983; Mazmanian and Sabatier 1981; Wirt and Kirst 1971.

[34]An Oregon Employment Relations Board decision that held that grievances over school board policies involving permissive subjects of bargaining were themselves permissive subjects drew attention to the distinction between the language often used in school board policy manuals and the language of collective bargaining agreements:

> ...Indeed this parade of horribles can be extended on and on by opening the District's 150 page School Board Policy Statement almost at random. And this is no accident. Unlike the language of bargained contracts, written school board policy statements often contain a great deal of pious hope and very little of specific directive. We believe that such policy generalizations serve a distinct leadership function proper to a school board; but that function is sometimes incompatible with the function which contract language must fulfill including surviving the scrutiny of an arbitrator. The impact of the Association's proposal, in short, would be to force the District to couch all of its written pronouncements with the care appropriate for the language of a legal contract. (Emphases in original; citations omitted.)
> Eugene Education Association v. Eugene School District, C-53-79, PECBR 4073 OR Employment Relations Board (1981).

are more clearly expressed than other school board policies, they are more likely to be enforced. Unions identify contract violations by using a combination of labor relations professionals and building representatives to "blow the whistle" on potential contract violations, and seek redress through an effective enforcement mechanism--the contract grievance procedure.

In such procedures, disputes over the intent of collectively bargained policies are usually resolved, as in 79 percent of the contracts in our sample, by binding arbitration. Arbitrators, unlike the courts, do not defer to the school board's interpretation of contract policy language and, in comparison with the courts, arbitration is informal, inexpensive, and swift (Elkouri and Elkouri 1973). These differences between the arbitral and judicial forums are important because where enforcement mechanisms are readily available, they are more likely to be used to assure consistency between a policy's intent and its implementation (Mazmanian and Sabatier 1981).

Our findings on implementation appear to contrast with some recent research on the implementation of collectively bargained educational policies. Johnson has commented that, "there is no clean match between what is supposed to be happening--what it says on paper--and what happens...."There is no certainty that language once negotiated will be implemented or enforced by the teachers" (Johnson 1982, pp. 144-145).

Another observer, citing Johnson's work, concluded that "considerable variation exists across schools operating under the same contract" (Sykes 1983, p. 91).[35] However, a careful review of Johnson's research suggests that is is not in fact contradictory to our findings although her conclusions may have been misinterpreted.

Although Johnson did not distinguish between educational policy and working conditions, when her observations focused on what we define as policy provisions her evidence appears to have confirmed our conclusions. For example, she notes that in districts where the contract limited class size "those provisions were closely enforced" (1981b, p. 6). On those occasions when districts she visited were required to transfer teachers, she notes that "the transfer practices of the districts conformed closely to those prescribed by the contract" (1981b, p. 15). With regard to selection of school staffs she found:

> "Many school districts still have policies permitting principals to interview new candidates for vacant positions. However, different rules--those that have been bargained collectively with teachers--must be adhered to when staff changes are the result of layoffs" (1981b, p. 14).

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[35] Gary Sykes, "Contradictions, Ironies, and Promises Unfulfilled: A Contemporary Account of the State of Teaching," Phi Delta Kappan, October 1983 (pp. 87-93). Also, Dianne Ravitch in The Troubled Crusade: American Education 1945-1980. (New York: Basic Books, pp. 314-15) uses Johnson's material to discount the impact of bargaining.

The reason for the apparent disagreement between our conclusions and Johnson's is that the conclusions about flexibiliy stem from her analysis of implementation of contractually specified workplace rules, not from the observations of educational policy implementation.[36]

Our finding that contractually mandated educational policies are indeed implemented is important because the effect(s) of a specific policy choice upon an organization's life may be profound. As organizational goals are more clearly fixed, the criteria for demonstrating success become more explicit both for the organization as a whole and for those who are employed by it. If the policies are enforced, autonomous behavior will be reduced (Berlew and Hall 1954; March and Simon 1958; Williams 1975).

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[36]She discovered instances when teachers "assume extra supervisory responsibilities, use preparation periods for inservice training, attend extra meetings, reallocate student assignments within the school, and volunteer for extra activities" (1981b, pp. 22-23). She also observed that teachers sometimes work longer days than required by the contract (1981b, pp. 8-9) and that principals sometimes allow teachers to violate procedural rules for taking leave (1981a, p. 24). These instances of flexibility demonstrate how a principal can deemphasize contractual constraints and obligations.

We did not attempt to assess systematically whether nonpolicy items were implemented in our sample interview districts. Nonetheless, we find no reason to suspect Johnson's observations about some variability in workplace rule enforcement. We would suggest, however, that it is important to remember that not all variation is evidence of lack of enforcement. When the official position and authority of principals provide them with an opportunity to extend favors to teachers, teachers exercise as much discretion when they decide to work additional hours or to volunteer for extra supervisory duties. Nowhere in Johnson's work does she hint that if a principal grants a favor to a teacher the teacher is <u>bound</u> to do anything in particular. That, after all, is what the contract workplace rules prevent.

Another objective of the study was to describe the extent of bargaining over three types of nonpolicy provisions: status quo provisions (maintenance of standards, agreement has precedence, duty to bargain and subcontracting) and grievance procedures, provisions affecting the working conditions of special education teachers, and noncompensation provisions similar to those analyzed by McDonnell and Pascal (1979) in their earlier study of collective bargaining agreements.

The status quo and grievance procedure provisions were selected for particular attention because of their unusually strong effects on school district discretion and their interaction with policy provisions. Among the sample contracts, 20 percent contain maintenance of standards clauses, 70 percent include agreement has precedence clauses, 34 percent include duty to bargain provisions, and 49 percent contain subcontracting provisions. In addition, nearly all the sample contracts contain grievance procedures and 79 percent provide for binding arbitration.

We also identified all nonpolicy provisions providing specific benefits for special education teachers as well as all policy provisions governing special education programs. The extent of bargaining over all special education-related provisions was documented to assess the degree to which an emerging, national issue has been addressed in local school district bargaining agreements. This analysis was also intended to allow consideration of Mitchell and colleagues' (1981) assertion that special education teachers wield only minimal influence in determining the bargaining agenda of teacher organizations. Analysis of the sample contracts revealed that 44 percent included policy provisions related to the education of handicapped students; 40 percent regulated student placement (31 percent set absolute class-size limits for self-contained classes of handicapped students and 19 percent regulated the mainstreaming of handicapped students or

governed the placement of handicapped students into special classes); and 15 percent regulated the curriculum or teaching methods for handicapped students.

In addition 60 percent of the sample contracts incorporated one or more nonpolicy provisions beneficial to special education teachers. Among others, these provisions include teachers' rights to be notified of and make recommendations on placement decisions for handicapped students (18 percent), extra pay or released time for completion of individualized educational programs (IEPs) for handicapped students and other nonteaching duties (18 percent), extra salary for teaching special education (38 percent), opportunites for inservice training (20 percent), and the formation of special committees to study the problems of special education (23 percent). Based on these findings it is clear that substantial policy and nonpolicy bargaining has been conducted around issues related to the education of handicapped students. When our results are compared with a 1971 study by Sosnowsky and Coleman it appears that bargaining has increased over both the policies that govern special education and nonpolicy provisions related to the working conditions of special education teachers. Based on these findings, we believe there is reason to suggest that special education teachers influence teacher union bargaining agendas.

Also identified was a third group of nonpolicy provisions similar to those described by McDonnell and Pascal (1979). Their research revealed significant increases in bargaining between 1970 and 1975 over the following noncompensation provisions: grievance procedures, pupil exclusion provisions, the right of teachers to refuse particular assignments, maximum class size provisions, and reduction in force procedures. The present study offers analysis of some similar provisions and confirms the continuation of this trend for the period between 1975 and 1981. Additionally, our research

indicates that bargaining over voluntary transfers, federal programs, and teacher inservice--categories of provisions appearing in less than 3 percent of the McDonnell and Pascal (1979, p. 10) sample contracts--increased substantially by 1981.

The Effects of Collective Bargaining on School District Adaptability

Nearly ten years ago, when collective bargaining in education was just beginning in many states, David Tyack described it as a "powerful new alignment of forces...comparable in potential impact to the centralization of control in small boards and powerful superintendents at the turn of the century." He described teachers as the group "with the greatest power to veto or sabotage proposals for reform" (1974, p. 288). Teachers clearly have exercised influence over the development of educational policy since the advent of collective bargaining. The question, however, remains: Does it matter to students, parents, teachers, administrators, or the community?

A number of themes might serve to unify the conclusions suggested by our analysis of negotiated educational policy provisions. The most obvious may also prove the most useful. The findings of extensive educational policy bargaining and uniformity of policy implementation lead us to conclude that many school districts and school personnel have lost a substantial portion of their capacity to adapt to changes in either the lay or professional education community. This is so because a bargaining agreement not only specifies what must be done, it often also dictates how things will be done, when, and by whom. Though most commentary about public sector bargaining has focused upon the "front end" or negotiation stage, a greater expenditure of organization time and energy is devoted to management of the contract and resolution of disputes through the grievance procedure. To engage efficiently and effectively in all these processes--negotiation, management,

dispute resolution--school administrations centralize personnel functions, attempt to apply the terms of a contract consistently, and create specialized labor relations positions that function to avoid costly errors in judgment (Goldschmidt 1983; Kerchner 1979). However necessary and logical for maintenance of a stable relationship between the school board and teacher organization, such centralization and specialization may not be as well suited to furthering a harmonious relationship with the community at large whose interests are not always patterned, consistent, or even well articulated.

This restructuring has important implications for the organization of schools, often labeled "loosely coupled." Loose coupling captures the idea that goals (ends) and processes (means) are not rational (causally connected), that formal structures are barely implemented, and that organizational subunits are poorly connected (Meyer and Rowan 1978; Weick 1976). Although the trappings of bureaucracy (e.g., division of labor, hierarchy, and written rules or procedures) are in place, the processes of coordination and control of the work--assumed to be present in most formal, bureaucratic organizations--are less apparent in schools. Schools are not organized around the demands of their work activities--the actual instruction of students. Rather, the formal structure of schools may better reflect the demands and institutionalized rules of their environment. These institutionalized rules include the proper classification and credentialing of teachers and students, regulation of curricula, and tacit understandings about such things as student grades, promotion, and graduation ceremonies. Scholars suggest that this discontinuity between structure, activity, and effects is functional in the conduct of educational activities (Meyer and Rowan 1977, 1978; Meyer, Scott, and Deal 1979; Weick 1976).

Yet, as policy-setting contract provisions proliferate, the ability

of the organization to adapt to change in the institutional environment may be constrained. For example, collectively bargained educational policy may be at odds with the traditional expectation that teachers will have substantial training and experience in support of their teaching assignments. It may be particularly ironic that the high regard for job security results in teachers being assigned outside their areas of expertise at a time when the Commission on Excellence in Education (1983) calls for better preparation and a more current and relevant knowledge base for public school teachers.

The loosely coupled structure has also permitted schools to adapt to the communities in which they are embedded, to mask inconsistencies, and to enhance their survival capacity. This sensitivity to local concerns is critical, for as Meyer, Scott, and Deal (1979) also note, schools must strive to maintain the support of constituents (community members) and participants (teachers and students) even as the district struggles to achieve conformity with norms advanced by the institutional environment of schools. Collective bargaining agreements usually embody an implicit demand of teachers: equal treatment of employees. Arbitrators, who ultimately may enforce the terms of 79 percent of the collective bargaining agreements in our sample, commonly recognize that contracts, expressly or by implication, require equal treatment of employees similarly situated <u>throughout the system.</u> However, this equality of treatment is difficult to achieve if authority is decentralized and principals enforce their individual interpretations of the contract's requirements. Therefore, authority is centralized to ensure uniform interpretation of contract language. This in turn may diminish the capacity of particular schools to respond to diverse or new community demands.

A dramatic, and extreme, example of the impact that centralization and uniform application of contract mandates may have on a school

organization is the case of the New York City Board of Education and its difficulties in resolving the Ocean-Hill Brownsville dispute of the mid-1960s. Ravitch (1974) chronicles the cycle of civil disruption and teacher strikes that erupted in New York City in 1968 as the Board of Education struggled to respond to a neighborhood demand for more authority over the education of its children in the face of teacher union demands that contractual rules governing teacher assignment be administered consistently throughout the city.

Somewhat less dramatic were the instances we found in our interview districts when implementation of a reduction-in-force provision resulted in teachers experienced in particular subjects or grade levels being reassigned to teach subjects or grade levels in which they hold secondary certification but are inexperienced. In those districts the capacity to respond to public expectations was further diminished when RIF provisions combined with provisions restricting teacher and student assignment. Most people expect that sound bases were used for selecting and assigning teachers to students. Currently, however, in many declining enrollment districts, teachers are assigned to a school because they were in a priority teacher selection pool, and not because they reflect the values of the neighborhood or the ethos of a particular school or because they will be the most effective teachers for certain students.

The thesis advanced here is that just as centralization of authority may narrow or impede a school district's responsiveness to community or neighborhood demands, negotiation of educational policy also constrains the organization's ability to adjust to changes in the broader institutional environment. Schools must strive to maintain conformity with both their institutional and local environments because failure to do so calls into question their validity and the competence of school managers (Meyer and

Rowan 1977; Meyer, Scott, and Deal 1979).

The general reduction of flexibility due to the impact of collective bargaining on the structure of the school district's educational organization and administration also is specifically reflected by a reduction in the autonomous behavior of building administrators. Building principals--the administrators who may have maintained a fair amount of autonomy under the loosely coupled organization of schools--may be those whose role has changed most notably. Given comprehensive collective bargaining agreements, many decisions once left to principals' judgment or influence are now beyond their reach. It will be difficult for them to respond to recent calls for school-site management and building leadership when so many decisions once made at the building level are either fixed by a contract or forwarded to labor relations specialists for determination.

This limited role for principals is in sharp contrast with the description of school administrator work and influence that follows:

> School administrators assign grades, subjects, and students to teachers; provide a school time schedule; and require periodic evaluation of student work. School administrators also influence who is selected to teach in a particular school, the material resources available to teachers, and the compensation and sanctions contingent upon work behavior. Administrators are therefore in a position to create a teacher work structure that satisfies the demands of various instructional approaches (Duckworth 1981, p. 8).

This description may apply to many administrators in the United States, perhaps even most. It is not an accurate description, however, of the authority of many of the principals in our sample of school districts. Fifty-nine percent of the contracts in this study impose significant procedural and/or substantive restrictions on reassignment of teachers to different grades or subjects within a building or program. Sixty percent of the contracts impose similar kinds of restrictions on transfer of teachers

between buildings. While not all of these provisions prohibit exercise of administrative judgment in the assingment of personnel, even where discretion remains, the provisions may erect such a substantial set of procedural barriers to assignment changes that administrators find the process too cumbersome or threatening to confront (Perry 1979).

As contract language may prevent or limit administrative discretion when making changes in teachers' assignments, it may also restrict the authority of principals to assign students to teachers. This prerogative of principals traditionally extended to assignment of both the numbers and the types of students to a particular class. Forty-three percent of the contracts in our sample regulate the first dimension by setting absolute limits on class sizes. Fifty-one percent establish rules for the assignment of students teachers may find troublesome, such as handicapped students or students with behavior problems.

Even more often than they regulate teacher and student assignment, contracts in this study set the rules for selection of teachers to fill vacancies. In 84 percent of our sample districts, principals have been substantially removed from the teacher selection process. The contract identifies groups of candidates from which vacancies will be filled, and the criteria for selection of candidates. Teacher employment in these districts has become an issue of contract management rather than a relatively open-ended process of matching personnel with students, schools, or neighborhoods. Principals in our interview districts conveyed both their sense of limitation as well as their determination to exert whatever influence possible within the area of latitude that remains.

One principal summarized his position in this way:

> We don't manage in a traditional sense because we don't have those powers. So we must have some other mystical powers to offer [in order] to do as well as we do. Most of us do rather well under the circumstances, but we don't have a hammer that we can use.

Ultimately, of course, loss of adaptability may be a matter of particular significance only when such a loss can be connected to a decline in effectiveness or potential effectiveness of a district's educational program. Cresswell and Spargo (1980) in their review of the research on the impacts of collective bargaining on elementary and secondary education, called for research that would provide a "better understanding of the mechanisms through which policy impacts on governance and operations produce influence on education outcomes." (emphasis theirs.) They noted that "If we...ask by what means the policy works and how it is viewed by those on whom impact is intended, there is very little on which to base an answer" (p. 71). We agreed with Cresswell and Spargo, and our study was specifically designed to allow us to describe the extent of bargaining over those policies most likely to have an educational impact upon students. Nevertheless, their question remains: What influences do these policies have on educational outcomes?

Unfortunately, we know little about what relationships exist between bargaining outcomes and student achievement. Linkages are bound to be shrouded, for numerous variables affect student achievement. In addition, the collective bargaining process was not instituted to resolve educational issues, but to specify something about the relationship between employers and employees. Nevertheless, though the bulk of any contract between a school board and teacher organization specifies agreement about salaries and conditions of employment, some portion of that same contract will probably

decide a matter of educational policy. When the contract fixes educational policies, the parties have not only negotiated something in an effort to achieve harmony in their working relationship, they have also fixed part of the educational process.

A brief matching of this report on the extent of bargaining with some effective schools prescriptions suggests that the connection between collective bargaining and student achievement may be more direct than previously suspected. In their recent review of the effective schools literature, Purkey and Smith (1982) describe nine "key" organizational and structural variables they found in effective schools research: school-site management, leadership, staff stability, curriculum articulation and organization, staff development, parental involvement and support, schoolwide recognition of academic success, maximized learning time, and district support. Collective bargaining agreements include both policy and nonpolicy provisions that fix district practices in all of these key areas except schoolwide recognition of academic success. For example, though building staff stability may be necessary to the maintenance and promotion of a school's success, in school districts with declining enrollments and/or financial resources, the collectively bargained educational policy provisions governing teacher placement may forestall a district's effort to achieve such stability.

Linked to such policy provisions that may preclude staff stability, are others that may limit a district's capacity to tailor programs of staff development. Consider Purkey and Smith's suggestion that "In order to influence an entire school the staff development should be school-wide rather than specific to individual teachers...." (pp. 38-39). Consider also that for a district unable to maintain staff stability at the building level, the need for a "school-wide" staff development program becomes especially

pronounced. However, in either case--with or without stable staffs--any incremental, long-range staff development program may be difficult for many districts to institute, because teachers and school boards are bargaining policy in this area also. Contracts in 27 percent of our sample specify the content of inservice programs, and contracts in 24 percent limit the number of inservice programs or set the schedule for required inservice programs. Staff stability and development are but two of the areas where decisions negotiated between school boards and teacher organizations have begun either to fix or narrow a district's capacity to adapt its programs to the reported characteristics of instructionally effective schools.

Finally, the trend toward bargaining policy is likely to continue. Like other professionals, teachers seek to control work decisions and conditions under which their services are rendered. Teacher unions, if they are to maintain or improve their strength, must assist teachers in efforts to attain their goals. As unions increasingly obtain provisions covering the broad range of teacher working conditions, and as school boards find it more difficult to meet union economic demands, educational policies will become increasingly the bargaining focus. Although school boards have experienced some success in garnering support to resist teacher wage demands (since they are clearly tied to tax rates), voter resistance to incremental policy demands is weaker because the bargaining process neither focuses public attention on policy issues nor facilitates public understanding of these issues. Indeed, the emotional tenor of the collective bargaining process and the slogans used by both groups may direct attention away from the more mundane yet critical aspects of school district operation.

Implications for Future Research

Many, but certainly not most, educational policies are derived from the process of collective bargaining. Furthermore, although the 80 districts included in the research sample have a combined student enrollment of more than 4,250,000 students, not all districts bargain with teachers. What are the implications for researchers who might wish to move from this report on the extent of educational policy bargaining to research in other areas? A research agenda for the further study of the extent and process of collective bargaining in public education would certainly include some relatively straightforward questions that could be answered through followup studies. For example, the smallest districts in our sample had a pupil enrollment of 15,000; yet, the vast majority of school districts enroll fewer than 15,000 students. A replication of this study for small school districts in states where policy bargaining is either particularly high or low in the larger districts could resolve the question of whether larger districts represent "flagships" for the smaller districts in the area of policy bargaining.[37]

Another area for research, only marginally explored in the present study, focuses on the relationship between bargaining agreements and state law. Our analysis of the variation in policy bargaining shows that the presence of policy bargaining was associated with states that by law do not permit strikes. But there are other areas of state law that merit scrutiny. For example, McDonnell and Pascal (1979) suggested that state scope of bargaining laws may influence the range and type of bargaining in individual districts. The bargaining of policy in states which have no law on scope of

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[37] See McDonnell and Pascal (1979), p. 34 for a suggestion that smaller districts follow the larger districts in the bargaining of noncompensation provisions.

bargaining should be compared with bargaining of policy where such laws exist. Further, among those states that permit bargaining, a comparison of states with different scope of bargaining frameworks would enable a more refined analysis of this relationship between the scope of bargaining and educational policy bargaining.

State laws also address the subject matter that is negotiated in collective bargaining agreements. For instance, some states have legislated reduction in force and/or teacher evaluation policies and procedures. To assess the role of policy bargaining in such areas it is important to understand whether school boards and teacher organizations negotiate provisions that merely reflect state law or that actually extend state law.

The present study also enables us to frame a question regarding the evolution of policy bargaining that may articulate what negotiators implicitly understand and policy makers should know. Our results suggest more strongly than did those of McDonnell and Pascal (1979), that policy bargaining may follow a prescribed evolution along a policy continuum.

Figure 2: Policy Bargaining Continuum

teacher placement	student placement	curriculum issues
stage 1	stage 2	stage 3

In its earlier stages, policy bargaining focuses primarily on concerns related to teacher placement, since these policies address matters that are closest to the working conditions of teachers. In the second stage, policy bargaining shifts to matters related to student placement; and, in its final stage, bargaining focuses on curriculum issues.

A modest effort to identify the implications of educational bargaining for creating effective schools might also be attempted. Since there is substantial variation among collective bargaining agreements, researchers should match a number of districts to discover whether the presence of conditions for effective schools is correlated with the presence or absence of certain negotiated educational policies. If such a relationship is verified, it should lead to discussions about whether, on balance, a contract that minimizes school-site autonomy is nonetheless a sound, beneficial, educational guide, since it also mandates a sound discipline policy, protects against classroom interruptions, and articulates curricular goals. Scholars and practitioners must also, then, devise an educational version of the "balancing test" in order to decide whether fixing these "sound" policies may serve to preclude a later articulation of policies even more likely to be beneficial.

Although questions concerning the educational consequences of policy bargaining may be framed, evidence on which answers might be based is not yet available. The natural research progression requires, first, a detailed description of the phenomena for possible correlation with other variables; and, next, experimental manipulation of relevant variables to determine possible causal relationships (Rosenshine and Furst 1973). Our hope is that this study, focused upon the first portion of the discovery process, will enable others to initiate work that will lead to understanding of causal links between collective bargaining and educational outcomes.

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APPENDICES

Contract Provision Analysis Form and Definitions of Terms
Background Characteristics of Sample Districts
Examples of Class-Size Provisions
Examples of Contract Grievance Procedures
Sample Involuntary Transfer Policy

APPENDIX A

Contract Provision Analysis Form

_____
(district, state)

CONTRACT PROVISION ANALYSIS FORM

	Page	Provision Number	Remarks
I. CURRICULUM RESTRICTIONS			
A. Regular Education			
*1. Teacher input mandated	___	_____ _____	
2. Regulation of programs	___	_____	
3. Regulation of materials/method	___	_____	
4. Mandated personnel	___	_____	
B. Special Education			
1. Regulation of programs	___	_____	
2. Regulation of materials/methods	___	_____	
C. Other curriculum policies	___	_____	
II. STUDENT PLACEMENT			
A. Class Size			
*1. CS guidelines	___	_____	
*2. CS limits/compensation	___	_____	
3. CS limits	___	_____	
4. CS limits: sp. ed. class	___	_____	
5. Workload limits: specialists	___	_____	

A-1

* Non-policy provisions

(district, state)

CONTRACT PROVISION ANALYSIS FORM

	Page	Provision Number	Remarks
B. Constraints on Placement of Students Being Disciplined			
*1. Discipline advisory committees	___	_____	
*2. Teacher notified of policy	___	_____	
*3. Teacher recommend only	___	_____	
*4. Teacher emergency powers	___	_____	
5. Consultation required	___	_____	
6. Teacher determines class return	___	_____	
7. Mandatory suspension for assault on teacher	___	_____	
8. Other discipline policies	___	_____	
C. Constraints on Placement of Handicapped Students			
1. Mainstreaming	___	_____	
	___	_____	
	___	_____	
2. Special class placement	___	_____	
	___	_____	
	___	_____	

A-2

* Non-policy provisions

(district, state)

CONTRACT PROVISION ANALYSIS FORM

Page	Provision Number	Remarks

III. TEACHER PLACEMENT

A. Teacher Selection

1. Pools (listed)

a. Riffed teachers	___	_____
b. Teachers involuntarily transferred	___	_____
c. Teachers requesting transfer	___	_____
d. Teachers returning from leave	___	_____
e. Long-Term substitutes	___	_____
f. Other pools	___	_____

2. No Pools: Selection Criteria (rank order)

a. External requirement 1 2 3 4	___	_____
b. Seniority 1 2 3 4	___	_____
c. Volunteers 1 2 3 4	___	_____
d. Objective criteria 1 2 3 4	___	_____
e. Admin. judgment 1 2 3 4	___	_____
f. Other 1 2 3 4	___	_____

A-3

CONTRACT PROVISION ANALYSIS FORM

	Page	Provision Number	Remarks
B. Change in Assignment within Building			
1. Restrictions			
a. Deadline	___	_____	
b. Just cause	___	_____	
c. Certification area only	___	_____	
d. Other restrictions	___	_____	
2. Personnel Selection Criteria (rank order)			
a. External requirement 1 2 3 4	___	_____	
b. Seniority 1 2 3 4	___	_____	
c. Volunteers 1 2 3 4	___	_____	
d. Objective criteria 1 2 3 4	___	_____	
e. Admin. judgment 1 2 3 4	___	_____	
f. Other 1 2 3 4	___	_____	

(district, state)

CONTRACT PROVISION ANALYSIS FORM

	Page	Provision Number	Remarks
C. Involuntary Transfer Restrictions			
1. Certification area only	___	_____	
2. Just cause	___	_____	
3. Limits on number of transfers	___	_____	
4. No involuntary transfers	___	_____	
5. Volunteers transferred first	___	_____	
6. Deadline	___	_____	
7. No disciplinary transfers	___	_____	
8. Permissible reasons	___	_____	
9. Other involuntary transfer restrictions	___	_____	

A-5

(district, state)

CONTRACT PROVISION ANALYSIS FORM

	Page	Provision Number	Remarks
D. Reduction-in-Force			
1. No RIF Allowed	___	_____	
2. Permissible reasons	___	_____	
a. Declining enrollment	___	_____	
b. Financial reasons	___	_____	
c. Program change or elimination	___	_____	
d. Other	___	_____	
3. Criteria for RIF			
a. External 1 2 3 4	___	_____	
b. Seniority 1 2 3 4	___	_____	
c. Objective criteria 1 2 3 4	___	_____	
d. Admin. judgment 1 2 3 4	___	_____	

A-6

_____
(district, state)

CONTRACT PROVISION ANALYSIS FORM

	Page	Provision Number	Remarks
IV. Grievance Procedure			
A. Grievances			
*1. Contract	___	_____	
2. Board policies	___	_____	
3. Admin. rules/procedures	___	_____	
4. Practices	___	_____	
*5. Exceptions (list disputes not grievable)			
a. _____	___	_____	
b. _____	___	_____	
c. _____	___	_____	
d. _____	___	_____	
*B. Arbitration			
1. Same as grievance	___	_____	
2. Exceptions (list disputes not arbitrable)			
a. _____	___	_____	
b. _____	___	_____	

* Non-policy provisions

_____
(district, state)

CONTRACT PROVISION ANALYSIS FORM

	Page	Provision Number	Remarks
*V. Status Quo Provisions			
A. Subcontracting limited			
1. _____	___	_____	
2. _____	___	_____	
B. Maintenance of Standards	___	_____	
C. Agreement has Precedence	___	_____	
D. Duty to bargain	___	_____	
VI. Staff Training			
*A. Paid release time	___	_____	
*B. Compensation/tuition reimbursement	___	_____	
C. Limits	___	_____	
*D. Teacher involvement	___	_____	
*E. Retraining at board expense	___	_____	
F. Inservice on specific topics	___	_____	

* Non-policy provisions

A-8

_____
(district, state)

CONTRACT PROVISION ANALYSIS FORM

		Page	Provision Number	Remarks
VII.	Miscellaneous Policy Provisions			
	A. _____	___	_____	
	B. _____	___	_____	
	C. _____	___	_____	
	D. _____	___	_____	
	E. _____	___	_____	
	F. _____	___	_____	
	G. _____	___	_____	
	H. _____	___	_____	
	I. _____	___	_____	
	J. _____	___	_____	

A-9

Definitions of Terms from the Contract Provision Analysis Form

I. Curriculum

A. Regular Education

1. Teacher input mandated. Requires that teachers be involved in making recommendations on curriculum changes, either via a curriculum committee or in some other fashion.

2. Regulation of programs. Mandates the establishment and/or the structure of educational programs in the curriculum.

3. Regulation of materials/methods. (1) Specifies inclusion or exclusion of certain teaching methods or curricular materials (2) Grants teachers authority to select or veto selection of materials/methods.

4. Mandated personnel. Specifies that certain personnel (e.g., reading teachers) are to be employed.

B. Special Education

1. Regulation of programs. Mandates the establishment and/or the structure of educational programs in the special education curriculum.

2. Regulation of materials/methods. (1) Specifies inclusion or exclusion of certain teaching methods or curricular materials for special education (2) Grants teachers authority to select or veto selection of materials/methods for special education.

C. Other Curriculum Policies

Sets criteria, other than those specified in definitions 2-4 above, for some aspect of the curriculum.

II. Student Placement

A. Class Size

1. Class size guidelines. Recommended limits without any compensation or additional support to teacher if limits exceeded. School board retains authority to exceed guidelines.

2. Class size limits/compensation. Compensation in some form mandated if class size guidelines are exceeded.

3. Class size limits. Specific limits on the number of students assigned to a classroom. If limits are exceeded, steps must be taken to reduce the size to the limits set.

4. Class size limits: special education class. Specific limits on the number of handicapped students either assigned to the teacher or actually present in the classroom. If limits are exceeded, steps must be taken to reduce the size to the limits set.

5. Workload limits: specialists. Specific limits on number of students assigned to "specialists" i.e., professionals engaged to work with special problems of handicapped on student load basis, e.g., speech therapists, physical therapists, etc.

B. Constraints on Placement of Students Being Disciplined

1. Discipline advisory committee. Teacher committee that recommends student discipline policies.

2. Teacher notified of policy. Teacher has no authority to exclude students from class but teachers have the right to be notified of the district/school policy on exclusion of students for unacceptable behavior.

3. Teacher recommend only. Teacher has no authority to exclude students from class but may recommend to the appropriate administrator that a student be suspended or expelled for unacceptable behavior.

4. Teacher emergency powers. Teacher may exclude a student from class temporarily for unacceptable behavior.

5. Consultation required. Teacher may temporarily exclude a student from class for unacceptable behavior and may require that a conference of any type be held prior to student's return.

6. Teacher determines class return. Teacher has authority to exclude a student from class and has sole discretion as to the student's eventual return.

7. Mandatory suspension--assault. Student is automatically suspended if he/she assaults a staff member.

8. Other discipline policies. Sets criteria, other than those specified in definitions 4-7, for some aspect of student discipline.

C. Constraints on Placement of Handicapped Students

1. Mainstreaming. Handicapped students mainstreamed into regular classes according to criteria specified in the contract or by the classroom teacher.

2. Special class placement. Handicapped students placed into special self-contained classes according to criteria specified in the contract or by the special education teacher.

III. Teacher Placement

A. Teacher Selection

1. Pools. Groups of teachers who share one of the characteristics listed below. Teachers within these groups must be selected, usually according to certification and seniority criteria, before nonbargaining unit applicants are considered to fill a vacant teaching position.

   a. Riffed teachers. Teachers previously dismissed for non-personal reasons.
   b. Teachers involuntarily transferred. Teachers moved involuntarily from one school or program to another.
   c. Teachers requesting transfer. Teachers requesting movement from one school or program to another.
   d. Teachers returning from leave. Teachers who have taken a leave of absence and are returning to work.
   e. Long term substitutes. Teachers who have been substituting for more than a minimum period of time specified by the contract.
   f. Other pools. Other characteristics used to group teachers for purposes of selecting personnel to fill vacancies.

2. Selection criteria. Criteria used by districts not using pools for purposes of selecting personnel to fill vacancies.

   a. External requirements. Criteria, such as affirmative action requirements, imposed on a district's selection practices by an outside source (e.g. court order).
   b. Seniority. Length of service determines which employees will be reassigned.
   c. Volunteers. Requires the selection of qualified teachers who have volunteered for a position.
   d. Objective criteria. Reassignment is according to specified criteria, such as training and experience qualifications.
   e. Administrative judgment. Reassignment is the prerogative of administrators.
   f. Other. Additional criteria to be used for purposes of selecting personnel to fill vacancies.

B. Change in Assignment within Building

1. Restrictions. Restrictions on non-voluntary movement of employees from one assignment to another within a school building or program.

   a. Deadline. Establishes a date beyond which changes in assignment may not be effected.
   b. Just cause. Requires that changes in assignment may be made only for just cause.

c. Certification area only. Prohibits changes in assignment to positions outside a teacher's certification area(s).
d. Other restrictions. Other restrictions on changes in assignment within a building or program.

2. Selection criteria. Criteria used to select personnel for reassignment within a building or program.

a. External requirement. Criteria, such as affirmative action requirements, imposed on a district's selection practices by an outside source (e.g. court order).
b. Seniority. Length of service determines which employees will be reassigned.
c. Volunteers. Requires the selection of qualified teachers who have volunteered for a position.
d. Objective criteria. Reassignment is according to specified criteria, such as training and experience qualifications.
e. Administrative judgment. Reassignment is the prerogative of the building administrator.
f. Other. Additional criteria to be used for purposes of selecting personnel for reassignment within a building or program.

C. Involuntary Transfer Restrictions

Conditions under which the non-voluntary movement of personnel between schools or programs may be made.

1. Certification area only. Prohibits involuntary transfers to positions outside a teacher's certification area(s).

2. Just cause. Requires that involuntary transfers may be made only for just cause.

3. Limits on number of transfers. Establishes limits on the number of times a teacher may be involuntarily transferred.

4. No involuntary transfers. Prohibits involuntary transfers for some or all members of the bargaining unit during the term of the contract.

5. Volunteers first. Requires that volunteers be requested before any involuntary transfers are made.

6. Deadline. Establishes a date beyond which involuntary transfers may not be effected.

7. No disciplinary transfers. Prohibits involuntary transfers as a means of disciplining employees.

8. Permissible reasons. Specifies the permissible reasons for involuntary transfers (e.g., only under conditions of enrollment decline).

9. Other involuntary transfer restrictions. Sets criterion, other than those in definitions 1-8, for involuntary transfers.

D. Reduction in Force (RIF)

Regulations on the dismissal of employees for non-personal reasons.

1. No RIF allowed. Prohibits RIF for some or all members of the bargaining unit during the term of the contract.

2. Permissible reasons. Identifies the conditions under which RIF is permitted.

   a. Declining enrollment. Permits RIF under conditions of declining enrollment.
   b. Financial reasons. Permits RIF under conditions of financial crisis.
   c. Program change/elimination. Permits RIF under conditions of of program change or elimination.
   d. Other. Other conditions under which RIF is permitted.

3. Criteria for RIF. Specifies criteria for the selection of employees to be laid off or retained.

   a. External requirements. Limitations from an outside source, such as a court order, which may mandate retention of certain types of personnel.
   b. Seniority. Selection of personnel for RIF or retention is determined by length of service.
   c. Objective criteria. Selection of personnel for RIF or retention is governed by objective factors such as number of college credits or type of teaching experience.
   d. Administrative judgment. Selection of personnel for RIF or retention is determined by administrators.

IV. Grievance Procedure

A. Grievances

The types of employer-employee disputes that may be resolved through the contract grievance procedure are specified.

1. Contract. Limits disputes subject to the grievance procedure to those involving matters covered specifically by language in the contract.

2. Board policies. Provides that disputes involving school board policies be resolved through the contract grievance procedure.

3. Administrative rules/procedures. Provides that disputes involving written administrative rules and/or regulations, or disputes involving actions taken by administrators be resolved through the grievance procedure.

4. Practices. Provides that disputes involving established but unwritten practices of the district be resolved through the contract grievance procedure.

5. Exceptions. Disputes which are explicitly excluded from resolution through the grievance procedure.

B. Arbitration

Provides for neutral third party resolution of grievances. The decision may be binding or advisory.

1. Same as grievance. All matters subject to the grievance procedure may be taken to arbitration.

2. Exceptions. Disputes which may be grieved but may not be arbitrated.

V. Status Quo Provisions

A. Subcontracting Limited

Specifies type of work that is reserved for bargaining unit members.

B. Maintenance of Standards

Provides that some or all established practices and/or employee rights and benefits in effect at the time the contract is signed are to be continued throughout the life of the agreement.

C. Agreement Has Precedence

Declares the contract to have precedence over any conflicting board policies or rules. May incorporate board policies or rules not in conflict with contract language into the agreement.

D. Duty to Bargain

Requires that the parties bargain over any proposed change in existing policies or practices if that change affects working conditions of employees.

VI. Staff Training

A. Paid Released Time

Recognizes the legitimacy of, or guarantees, leave with pay from instructional duties for teachers to visit classrooms or attend training sessions or professional meetings.

B. Compensation/Tuition Reimbursement

Provides compensation for teachers who attend required inservice beyond the regular workday or tuition reimbursement for teachers who attend inservice programs at the direction of the administration.

C. Limits

Limits the number of inservice programs teachers may be required to attend or sets the times required inservice programs may be offered.

D. Teacher Involvement

Requires that teachers be allowed formal participation in the process of determining inservice program content.

E. Retraining at Board Expense

Establishes the right of teachers to take career retraining or recertification courses paid for by the school district.

F. Inservice on Specific Topics

Mandates inservice programs on particular topics.

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APPENDIX B

BACKGROUND CHARACTERISTICS OF SAMPLE DISTRICTS

	Pupil Enrollment			Union Affiliation			State Impasse Law		Per Cent State Workforce Unionized	
	15,000-25,000	25,000-50,000	50,000+	NEA	AFT	Indep	Strikes Legal	Strikes Not Authorized	Less than 27%	More than 27%
STATE A										
District 1	X			X				X		X
District 2			X			X		X		X
STATE B										
District 1		X		X				X		X
STATE C										
District 1		X			X		X			X
District 2			X		X		X			X
STATE D										
District 1	X				X			X		X
STATE E										
District 1		X		X				X	X	
STATE F										
District 1	X			X			X		X	
District 2	X			X			X		X	
District 3			X	X			X		X	
District 4	X			X			X		X	
STATE G										
District 1		X			X			X		
District 2	X			X				X	X	
STATE H										
District 1		X				X		X		X
District 2			X		X			X		X
District 3			X	X				X		X
District 4		X		X				X		X
District 5		X			X			X		X
District 6	X			X				X		X
STATE I										
District 1			X		X			X		X
District 2		X			X			X		X
District 3	X				X			X		X
District 4	X				X			X		X
District 5	X				X			X		X
STATE J										
District 1		X		X				X	X	
STATE K										
District 1		X		X				X	X	
STATE L										
District 1	X			X			X		X	
STATE M										
District 1		X			X			X		X
District 2			X		X			X		X
STATE N										
District 1		X		X			X		X	
District 2	X				X		X		X	
District 3	X				X		X		X	
District 4		X			X		X		X	
District 5	X				X		X		X	
District 6	X				X		X		X	
District 7		X			X		X		X	
STATE O										
District 1			X		X			X		X
District 2	X			X				X		X
District 3	X				X			X		X
STATE P										
District 1			X		X			X	X	
District 2	X			X				X	X	
STATE Q										
District 1			X		X			X	X	
District 2	X			X				X	X	
STATE R										
District 1		X		X				X	X	
STATE S										
District 1	X				X			X		X
District 2	X				X			X		X
District 3		X		X				X		X
STATE T										
District 1			X		X			X		X
District 2		X			X			X		X
District 3		X		X				X		X
District 4	X					X		X		X
District 5	X					X		X		X

	Pupil Enrollment			Union Affiliation			State Impasse Law		Per Cent State Workforce Unionized	
	15,000-25,000	25,000-50,000	50,000+	NEA	AFT	Indep	Strikes Legal	Strikes Not Authorized	Less than 27%	More than 27%
STATE U										
District 1			X	X			X			X
STATE V										
District 1			X		X			X	X	
District 2			X		X			X	X	
District 3			X			X		X	X	
District 4	X				X			X	X	
District 5	X				X			X	X	
District 6		X			X			X	X	
District 7	X				X			X	X	
District 8		X		X				X	X	
STATE W										
District 1	X				X			X	X	
STATE X										
District 1		X			X			X	X	
STATE Y										
District 1			X	X				X	X	
District 2	X			X				X	X	
STATE Z										
District 1	X				X			X	X	
District 2		X			X			X	X	
District 3	X			X				X	X	
District 4			X	X				X	X	
District 5			X			X		X	X	
District 6	X			X				X	X	
District 7	X				X			X	X	
District 8	X			X				X	X	
District 9		X			X			X	X	
District 10	X			X				X	X	
District 11	X				X		X	X	X	
District 12		X		X				X	X	
District 13		X		X				X	X	
District 14	X			X				X	X	
STATE AA										
District 1	X			X				X	X	
District 2	X			X				X	X	
STATE BB										
District 1		X		X			X		X	

APPENDIX C
Examples of Class-size Provisions

Although class-size provisions have been categorized according to whether they set guidelines, guidelines with compensation, or absolute limits, it must be remembered that these categories are imposed for the purpose of simplifying discussion. Contract language is often complex. Frequently, even provisions that are classified into a single category on the basis of shared characteristics will exhibit considerable variation in format and content. This appendix contains examples of five class-size provisions. All set absolute class-size limits.

Weighted Class-Size Formula

Example 1:

Identified exceptional students and those served by ESE resource teachers shall be counted as two (2) for balancing class loads at the school level in elementary and secondary schools.

Example 2:

Weight Factor	Class Category Explanation [1]
(1.0)	1. Normally Achieving Students who are progressing satisfactorily and achieving at an acceptable rate for their grade level.
(1.5)	2. Gifted Students* Students who need enrichment and supplementation of curriculum, materials, and activities and who benefit from increased individual attention from the teacher.
(1.5)	3. Slow Learners* Students whose rate of progress is below satifactory levels and who require adjustment of materials below that of normally achieving classmates.
(1.5)	4. Bilingual Students with inadequate English language development.

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[1] This formula is used, in conjunction with another contract provision that establishes an absolute limit on the number of students in any classroom, to determine the number of students actually to be assigned to a class. Thus, if the absolute limit is 35 students per classroom, that limit would be reached if 17 students weighted 2.0 each were assigned to the class.

(1.5) 5. Mobility
Students whose entrances into school may require the teacher to provide additional materials and individual attention over a prolonged period of time to stabilize the students' levels of progress.

(1.5) 6. Chronic Absenteeism
Students whose patterns of attendance cause interruption of the continuity of progress and difficulty in maintaining levels of achievement.

(2.0) 7. Reading Disability
Students two or more years below grade level who require individual assistance in comprehending instructions and whose reading level requires locating and coordinating special materials in many curriculum areas.

(2.0) 8. Discipline Problems
Students whose behavior is disruptive to the point of lowering the effectiveness of the teacher in classroom management and instruction.

(2.0) 9. Significantly Limited Intellectual Capacity (SLIC)
Students with significantly limited intellectual capacity who are currently in a SLIC program, have been staffed into a SLIC class and denied admittance by parents, or who have been mainstreamed and are required to adjust to a regular classroom environment.

(2.5) 10. Emotionally Disturbed
Students whose behavior exhibits emotional instability detrimental to the classroom activities.

(2.5) 11. Identifiable Perceptual and Communicative Disorders (IPCD)
Students with identifiable perceptual and communicative disorders who are currently in an IPCD program, have been staffed into an IPCD class and denied admittance by parents, or who have been mainstreamed and are required to adjust to a regular classroom environment.

(2.5) 12. Hyperative
Students who demonstrate an inability to restrain their own physical activity to an acceptable classroom standard.

(2.5) 13. Monolingual Foreign Language
Students who speak no English.

(1.5 to 2.5) 14. Other
Students who don't fit any of the above categories should be described and accounted for in category 14 of the class tally. Assign your own weight factor within the range indicated (1.5 to 2.5).

The weight factors to be used in each category are for the purpose of determining your class load. The total load factor helps determine the nature and extent of instructional problems caused by excessive class size without relying exclusively on numbers in classes.

*Secondary teachers should use categories 2 and 3 only for the heterogeneously grouped classes.

Example 3:

Absolute Class-Size Limits with "Lower Optimum" Sizes

The parties agree that it is their mutual goal that class size be lowered whenever feasible having due regard for the availability of staff and facilities. The maximum total teaching load per individual teacher in the junior and senior schools for other than teachers of performing music groups, physical education and typing, shall be 170 pupils per 5 periods of actual classroom teaching (or a pro rata number of pupils for a lesser teaching day). No such teacher shall be required without his/her consent to teach more than thirty-five (35) pupils in any one class unless, in the opinion of the principal, a class of greater size cannot be avoided, and in no event shall he/she be required to teach a class of greater than thirty-seven (37) pupils without his/her consent.

Example 4:

Absolute Class-Size Limits with an "Escape Clause"

Section 1: The maximum class size for grades K-6 for the duration of this agreement shall be as indicated below:

Class Size

Grade Level	1980-81 Title I	1980-81 Regular	1981-82 Title I	1981-82 Regular	1982-83 Title I	1982-83 Regular
K-1	27	28	26	27	26	27
2-3	27	28	27	28	27	28
4-6	30	31	30	31	30	31

Section 2: The maximum size for 7-12 shall be 32 pupils. The maximum class size for (school name deleted) shall be 26 pupils.

Section 3: The maximum size for special education classes shall not exceed state guidelines.

Section 4: Effective January 1, 1977, the maximum class size for split grades and split classes shall be 26 pupils.

Section 5: Effort shall be made by the board to keep first grade, split grades and classrooms where there is a heavy concentration of disadvantaged children, below the maximum number.

Section 6: Exceptions to the maximum above may be made in Music, Physical Education, Typing and Study Halls.

Section 7: If the total number does exceed the maximum or in schools where classroom space is not available, and where adherence to the maximum class load could create undesirably small classes, the involved teacher, principal, association representative and board representative shall meet to plan for adjusting and resolving the situation.

Example 5:

Limits on Enrollment Differences for Classes Below the Absolute Limits Established by Contract[2]

When two or more classes of the same grade level(s) are housed at the same school site, the enrollment difference between the smallest and largest classes shall not exceed five except by mutual agreement of the site administrator and the teachers involved.

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[2]This contract provision appears in conjunction with a provision that sets absolute class-size limits.

APPENDIX D

Examples of Contract Grievance Procedures

Contract grievance procedures can or may not establish educational policy. Only after investigation of contract language and application of the balancing test can a particular grievance procedure be categorized as an educational policy or a working condition of teachers. For example, some sample contracts provide that only contract provisions are subject to binding arbitration.[1]

Under the definition of educational policy employed in this study, the grievance and arbitration definitions below are not educational policy provisions even if used to enforce another contract provision that establishes policy. The educational program is fixed by the policy-setting provision, not by its enforcement through the grievance procedure. Grievance procedures that provide for enforcement of contract provisions weigh more heavily toward teacher working conditions than matters of educational policy. For example, one sample contract's grievance procedure provided the following:

GRIEVANCE PROCEDURES

The following grievance procedures shall apply to teachers. There shall be no restraint, coercion, interference, discrimination or reprisal exerted by either party on any teacher or any administrator concerning the filing of a grievance.

A. Definitions

1. A "grievance" is a contention or claim by a teacher or class of teachers that there has been to him/her a personal loss or injury resulting from a violation or inequity in the application or interpretation of the terms of this Agreement. "Personal loss" or "injury" shall mean that the grievant has been directly affected in a substantive way as a result of the alleged violation of the Agreement.

A grievance shall not include, and this grievance procedure shall not apply to any of the following:

a. Any matter as to which the District is without authority to act;
b. Any proceeding for dismissal of permanent teachers or non-renewal of probationary teachers;
c. Any attempt to change this Agreement provided such changes are not inconsistent with this Agreement;
d. Evaluations and targets are not grievable except for violations of procedural requirements and timelines contained in the District's Personnel Evaluation Program and [state law].

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[1] A small percentage of sample contracts make no provision for arbitration (7 percent) or provide for only advisory arbitration (14 percent). These contracts are omitted from the analysis that follows.

LEVEL IV - Arbitration

Definition of Grievances Subject to Arbitration.
Insofar as the Board's decision is alleged by the aggrieved to be a violation, misinterpretation or erroneous application of a specific provision of this Agreement and does not involve claims of discrimination by reason of age, race, religion, color, sex or national origin, the aggrieved may submit his/her grievance to the Association. The Association shall then determine whether or not to subject the grievance to arbitration. (Discrimination claims are excluded because of the adequate state and federal administrative and judicial remedies applicable for redress of such claims.) Submission for binding arbitration must be with the concurrence of and by the Association.

* * * * *

A second type of contract grievance procedure permits grievances over contract provisions, school board policies, administrative rules, and/or established past practices not included in the contract. However, binding arbitration may be limited to grievances over contract provisions. To the extent a grievance procedure allows grievances over policies, rules, and practices that regulate educational policies of the district, the grievance procedure has the potential to fix portions of the educational program that fall within its scope. Nevertheless, unless a grievance procedure that incorporates policies outside the contract also permits binding arbitration of disputes about the interpretation of those external policies, the grievance procedure does not establish policy. The following example of such a grievance procedure is taken from one of the sample contracts.

B. Definitions
A "grievance" shall mean a complaint (1) that there has been as to a teacher a violation, misinterpretation or inequitable application of any of the provisions of this agreement or (2) that teacher has been treated unfairly or inequitably by reason of any act or condition which is contrary to established policy or practice governing or affecting employees, except that the term "grievance" shall not apply to any matter as to which the Committee is without authority to act. As used in this article, the term "person" or "teacher" shall mean also a group of teachers having the same grievance.
Any discipline in relation to collective bargaining unit members shall be for just cause.

* * * * *

2. Power of the Arbitrator
Not withstanding anything to the contrary, no dispute or controversy shall be a subject for arbitration unless it involves the meaning, interpretation or application of an express provision of this contract. The arbitrator shall have no power to alter, add to, subtract from or modify any provision of this Agreement. The parties are agreed that no restrictions are intended on the powers of the Committee except those set forth in

the language of this Agreement.

As this example illustrates, an arbitrator enforcing this contract may reach a decision that fixes a portion of the educational program only if the parties have previously negotiated specific contract language that admits to such an interpretation. Like the first example, any policies established by the contract derive from the initial negotiation of a policy-setting provision and not from the terms of the grievance procedure.

Only grievance procedures that permit arbitration of policies external to the contract establish educational policy. The rationale for distinguishing this third category of grievance procedures from the first two rests on the differences in language used to record policies within and without contracts. The assumption is that the parties to a collective bargaining agreement understand that policies included in contracts may be submitted to arbitration and therefore these policies are written with great care. However, policies external to the contract seldom are written with the precision or care of legal language.[2] As a result, submission of external policies to binding arbitration may result in the local educational program being fixed in a manner never intended by the authors of those policies. One example of such a grievance procedure is the following:

> **4.1 Objective.** It is the declared objective of the Board and the Union to encourage prompt resolution of grievances. The Board and the Union recognize the importance of prompt and equitable disposition of any complaint at the lowest organizational level possible.
>
> **4.2 Definition.** A grievance is a violation, misapplication or misinterpretation of a specific provision of this Agreement or of a policy of the Board of School Commissioners which affects the terms and conditions of employment.
>
> **Step 5 - Arbitration.** Within ten (10) days following receipt of the Step 4 decision, the Union may move any unresolved grievance to arbitration under the Voluntary Labor Rules of the American Arbitration Association with simultaneous notice to the Board and the Superintendent. The decision of the arbitrator shall be final and binding on all parties to the arbitration.

In summary, grievance procedures establish educational policy only when they: (1) incorporate board policies, administrative rules, and/or established practices that determine educational policies; and (2) provide for binding arbitration of disputes over these policies, rules and/or practices.

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[2] See discussion on pages 69-72.

APPENDIX E
Sample Involuntary Transfer Policy

An example of a rather elaborate set of provisions which lays out restrictions in all the identified categories is given below. This provision highlights the potential such restrictions have, in combination, for limiting a district's ability to make transfers.

Section D:

1. Any staff member who is affected by a change in assignment shall be notified and consulted by the principal or head supervisor as soon as possible. Any transfer which is not acceptable to the staff member involved shall be considered an involuntary transfer and subject to the provisions of Section E.

2. No transfers, unless voluntary, shall be made after June 1 prior to the coming year, except when necessitated by changing school enrollments, staff reductions, economic conditions or new educational programs. After August 15, involuntary transfers shall be allowed only by changing school enrollments.

Section E:

An involuntary transfer shall be subject to the following provisions:

1. The Board will release the staff member from a contract if so requested.

2. All efforts must be made to accomplish the assignment or transfer from non-tenured staff members. In the event that there is need for transfer of a tenured staff member, such transfer will be based on seniority, the staff member with the least seniority, being transferred first.

3. A staff member being transferred has the right to appeal the transfer through the grievance procedure.

4. A staff member shall not be assigned to a position outside his/her area of competence or major/minor area of concentration. A staff member transferred involuntarily shall be transferred only to a comparable position.